

NEW APPLICATION



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**ORIGINAL RECEIVED**

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AZ CORP COMMISSION  
DOCKET CONTROL

Attorneys for Applicant SOLON Corporation

**BEFORE THE ARIZONA CORPORATION COMMISSION**

KRISTIN K. MAYES  
CHAIRMAN

SANDRA D. KENNEDY  
COMMISSIONER

PAUL NEWMAN  
COMMISSIONER

GARY PIERCE  
COMMISSIONER

BOB STUMP  
COMMISSIONER

**IN THE MATTER OF SOLON  
CORPORATION REGARDING ITS  
REQUEST FOR SPECIAL  
CONTRACT APPROVAL FOR  
SOLAR SERVICES AGREEMENT**

) **DOCKET NO.** E-20729A-10-0086  
)  
) **APPLICATION FOR SPECIAL CONTRACT**  
) **APPROVAL: EXPEDITED REVIEW**  
) **REQUESTED**

Applicant, SOLON Corporation ("SOLON"), by and through its undersigned counsel  
hereby submits its Application for Special Contract Approval seeking expedited review.

RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of March, 2010.

Rose Law Group pc

Court S. Rich

M. Ryan Hurley

6613 N. Scottsdale Road, Suite 200

Scottsdale, Arizona 85250

Attorneys for Applicant SOLON Corp.

Arizona Corporation Commission  
**DOCKETED**

MAR 10 2010

DOCKETED BY

MR

1 **APPLICATION OF SOLON CORPORATION FOR SPECIAL CONTRACT APPROVAL**  
2 **OF SOLAR SERVICES AGREEMENT**  
3

4 **I. Background**

5 SOLON files this Application seeking Special Contract Approval of a Solar Services  
6 Agreement (“SSA”) between SOLON and Pima County, a political subdivision of the State of  
7 Arizona (the “County”). The SSA and an amendment thereto are attached to this Application as  
8 **Exhibit A.**

9 SOLON files this Application seeking an Order approving the rate proposed in the  
10 attached SSA as a Special Contract and requesting that such Order be substantially similar to the  
11 Order approved for SolarCity in Track One of Docket No. E-20690A-09-0346. SOLON submits  
12 this SSA for special contract approval with the understanding that this application does not  
13 indicate that SOLON acknowledges the Commission’s jurisdiction to regulate SOLON under  
14 these facts. In fact, SOLON believes that the Commission does not have jurisdiction over SSA  
15 providers, and to the extent the Commission has any jurisdiction over this matter it is on a  
16 limited and interim basis pending the outcome of Track Two of Docket No. E-20690A-09-0346.  
17 Further, SOLON provides this Application pursuant to and in reliance on the Commission’s July  
18 22, 2009 procedural order in Docket No. E-20690A-09-0346 (the “**Procedural Order**”)  
19 indication that parties to the SolarCity docket will not use this filing to prejudice in any way the  
20 outcome in Track Two of that Docket.

21  
22 **II. Specifics**

23 SOLON intends to install and operate an approximately 1 MW DC solar photovoltaic  
24 system (the “**System**”) at the Roger Road Waste Water Reclamation Facility (the “**Premises**”)  
25 located in and operated by the County. The County selected SOLON to construct this project via  
26 a County Request for Proposal (“RFP”) pursuant to the County’s competitive procurement  
27 process. During the RFP process the County independently determined that SOLON’s proposed  
28 System provides the County with the greatest benefit.

1 SOLON will install own and operate the System pursuant to the attached SSA and its  
2 amendment. Under the SSA, SOLON will design, install, maintain and finance the solar System  
3 on the customer's Premises with no up front cost pursuant to all applicable rules and regulations  
4 including the Commission's Interconnection Document and Tucson Electric Power's ("TEP" or  
5 the "Utility") Interconnection Standards. The County will benefit from this arrangement by  
6 being able to adopt the solar System with zero up-front costs while saving significant amounts of  
7 money over time.

8 The rate contemplated by the SSA is \$.0959/kWh fixed for 20 years. See Section 2.4.2 of  
9 the SSA and Exhibit 1 to the SSA for confirmation of the rate calculation. SOLON and the  
10 County have already secured a reservation with TEP for a rebate associated with the System and  
11 its Renewable Energy Credits ("RECs") (see Exhibit B, REC Purchase Contract). Therefore,  
12 there will be no modifications to the SSA rate requested herein. In addition, SOLON has  
13 assigned the RECs associated with the System to the County and subsequently sold the RECs to  
14 the Utility in exchange for the applicable rebate at the Utility's request. The rebate was  
15 simultaneously assigned directly to SOLON in consideration for installation of the System under  
16 the SSA (see Exhibit C, Assignment Assumption and Release Agreement).

17 The installation of this System and the approval of the SSA rate are in the best interests  
18 of the County and the public. Further, approval of the SSA rate proposed in this Application is  
19 in the public interest as it will further the Commission's goals under the REST standards and the  
20 Utility's ability to comply with those standards.

### 21 22 **III. Time is of the essence: expedited review request**

23 SOLON submits this SSA for special contract approval and seeks expedited review. This  
24 project has already been constructed and is nearly complete and ready to go on line. SOLON  
25 and the County risk delays that will cause lost profits and savings if the project cannot be turned  
26 on when it is complete. SOLON hoped that Docket No. E-20690A-09-0346 (SolarCity Docket)  
27 would be resolved in advance of the date of completion of the System but because that has not  
28 occurred SOLON is seeking this approval as quickly as possible. Further, the decision in Track

1 2 of Docket No. E-20690A-09-0346 could result in a need for a lengthy rule making procedure  
2 which, if this Special Contract is not approved, could delay or jeopardize this almost completed  
3 project. In addition, as discussed above, SOLON has already secured a reservation with the  
4 Utility (TEP) for the rebate associated with the System's RECs; any delay would jeopardize this  
5 reservation and thus the economic viability of the project and TEP's plans for compliance with  
6 the Commission's REST standards. Finally, every day that passes means one less day that the  
7 County can save money in these difficult economic times.

#### 8 9 **IV. Conclusion**

10 For these reasons, SOLON hereby respectfully requests that the Commission  
11 expeditiously approve the rate proposed in the attached SSA as a special contract pursuant to the  
12 framework utilized in Track One of Docket No. E-20690A-09-0346.  
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1 **Original and 13 copies filed on**  
2 **this 17th day of March 2010 with:**

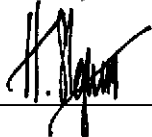
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## EXHIBIT A

## SOLAR SERVICES AGREEMENT

THIS SOLAR SERVICES AGREEMENT ("SSA" or this "Agreement") is made this 8th day of June 2009 (the "Effective Date") by and between PIMA COUNTY (hereinafter "COUNTY"), a body politic and corporate of the State of Arizona, and SOLON PM1, LLC, an Arizona limited liability company ("LICENSEE"). COUNTY and LICENSEE are sometimes individually referred to herein as a "Party" or, collectively, as the "Parties." Any terms not defined herein shall have the mean ascribed to them in the SLA (as defined below).

Whereas, COUNTY and LICENSEE desire to agree to terms whereby LICENSEE will supply certain services to COUNTY including the sizing and placement of a solar power generation facility, the financing of costs, including the possible monetizing of tax benefits, the production of solar generated electricity to serve COUNTY's facilities by way of this SSA and the continuing maintenance in connection with the solar facility; and

Whereas, concurrent with this SSA the COUNTY will grant to LICENSEE a license pursuant to a Solar License Agreement ("SLA") to design, finance, construct, own, maintain, and operate solar electric generating System(s) on COUNTY's facilities to serve COUNTY's electric loads;

Now, therefore, the COUNTY and LICENSEE agree as follows:

### 1. DEFINITIONS

In addition to the terms that are defined elsewhere in this SSA, the following terms have the following meanings when used herein:

- 1.1 "Access Procedures" has the meaning set forth in Section 6.7 of the SLA and in its Exhibit "IV."
- 1.2 "Alterations" has the meaning set forth in Section 6.8 of the SLA.
- 1.3 "Applicable Laws" has the meaning set forth in Section 12.11 of the SLA.
- 1.4 "Commercial Operation Date" means the date that the COUNTY has issued a Certification of Completion for the construction and installation of the System(s) pursuant to Section 6.3 of the SLA.
- 1.5 "Contract Price" means the price of Electricity pursuant to Exhibit 1 of the SSA.
- 1.6 "Day" means calendar day unless otherwise specified herein.
- 1.6 "Electricity" means electrical energy, measured in kilowatts and kilowatt-hours that (a) is produced by the System, (b) is delivered by LICENSEE to the COUNTY at the Electrical Interconnection Point, (c) meets the Green-e standard and (d) conforms to applicable utility and/or authoritative regulatory body standards.
- 1.7 "Electrical Interconnection Point" means the point(s) specified in the Project Design where the System connects to the existing electrical systems serving the Facility.
- 1.8 "Energy Management System" means the County's automatic controls system capable of receiving energy production data from the System
- 1.9 "Energy Service Provider" means an investor owned utility, a municipal utility or other electricity provider that serves electricity commodity to the Facility or to the

campus where the Facility is located.

1.10 "Environmental Law(s)" means each and every applicable federal, state, COUNTY and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal, state, COUNTY and local governmental agency or other governmental authority pertaining to the protection of human health and safety or the environment.

1.11 "Facility" or "Facilities" means the land or improvements owned and operated by COUNTY on which the System will be installed. Facility and Facilities may be used interchangeably.

1.12 "Fiscal Year" means the COUNTY's Fiscal Year, beginning on July 1 of each calendar year and ending on June 30 of the following calendar year.

1.13 "Force Majeure" means an act of God (such as earthquakes, fires, riots), actions or inactions of a regulatory authority, or actions of others such as strikes, lockouts, or other industrial disturbances, not within the control or arising from the fault of the party claiming Force Majeure. Any party claiming Force Majeure shall advise the other party as soon as possible of the occurrence of the event and shall provide the other party with the basis of the claim, in writing, within ten (10) days of the occurrence of the event. Parties shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

1.14 [Intentionally left blank.]

1.15 "Interest Rate" means the then-current prime rate for Bank of America, N.A., as that rate is announced from time to time.

1.16 "Hazardous Material" means, without limitation, any substance defined as "hazardous substance," "hazardous waste," "extremely hazardous waste," under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1317 et seq.; Ariz. Rev. Stat. §§ 49-201(19) and 49-921(5); and any substance regulated pursuant to any federal or Arizona Environmental Law(s). The term "Hazardous Material" includes, but is not restricted to, asbestos, polychlorinated biphenyls (PCBs), and petroleum.

1.17 "Lender" has the definition provided for in Section 19.1.

1.18 "Licensed Area" means the area of the Facility used by LICENSEE to install, operate and maintain the System, as described in Exhibit "II" of the SLA.

1.19 "LICENSEE" means the party to this SSA that will install, own and operate the System and sell Electricity to COUNTY at the Facility.

1.20 "Lost Savings" means the cost to COUNTY of Electricity not provided by the System as calculated in Exhibit 1 to the SSA, Section 3.

1.21 "Operational Year" means each twelve-month period commencing on the Commercial Operation Date.

1.22 "Renewable Energy Credit" means renewable energy credit(s) or certificates, emission reduction credits, investment credits, production tax credits, emission allowances, green tags, tradable renewable credits, related to renewable energy productions or environmental characteristics that are attribute to the electricity produced by the System or is a commodity that is separated or unbundled from the underlying



electricity supplied System.

1.23 "Savings Value" means the difference between the annual average otherwise applicable tariff prices as calculated per Exhibit 1 to the SSA, Section 3, and the contract price for Electricity.

1.24 "Solar License Agreement" or "SLA" means that certain Solar License Agreement between COUNTY and LICENSEE, of even date herewith, for the installation and operation of the System at the Facility.

1.25 "SSA" means this agreement between the COUNTY and LICENSEE as described in the recitals above.

1.26 "State" means the State of Arizona.

1.27 "System" means the integrated assembly of any solar concentrator components, photovoltaic panels, mounting assemblies, inverters, converters, meters, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, together with the Electrical Interconnection Point on the primary side of the existing Tucson Electric Power meter on Sweetwater Drive and the high voltage power lines from the solar system to the Electrical Interconnection Point, installed in the Licensed Area for the purpose of generating Electricity for purchase by the COUNTY, as more particularly described in Exhibit III of the Solar License Agreement.

1.28 "Term" means the term of this SSA as set forth in Section 3.

1.29 "Termination Fee" means the payment by the COUNTY, described in Exhibit 5 hereof, upon early termination of this SSA.

1.30 "Utility" means the local provider of electric transmission and distribution services to the COUNTY in the absence of the System.

## **2. AGREEMENT**

2.1 Sale of Electricity by LICENSEE. LICENSEE will sell to COUNTY all Electricity supplied by the System during the Term, at the price per kilowatt-hour as specified in Exhibit 1 Section 1. LICENSEE shall not offer or sell such Electricity to anyone other than the COUNTY without the prior written consent of the COUNTY. Notwithstanding the preceding sentence, LICENSEE may sell unbundled Renewable Energy Credits consistent with Section 6 and Exhibit 1 Section 1.

2.2 Purchase of Electricity by COUNTY. COUNTY will purchase from LICENSEE all Electricity that meets the specifications set forth in Exhibit 1, up to the available output of the System, on the terms stated in Exhibit 1. COUNTY represents and warrants that it has received all necessary authorizations and approvals required to enter into this SSA and when executed the SSA and SLA will be binding upon the COUNTY.

2.3 Installation of System. LICENSEE will install the System at or on the Facility in accordance with the SLA attached hereto as Exhibit 6.

2.4 Services Provided by LICENSEE. LICENSEE will provide all of the following as set forth in its Proposal dated November 11, 2008 ( LICENSEE's Proposal ) attached to the SLA as Exhibit VI:

2.4.1 Meter. LICENSEE will measure the actual amount of Electricity delivered to the COUNTY by the System at the solar site 480 volt meter utilizing a commercially available revenue grade interval data-recording meter (the "Meter").

2.4.1.1 The Meter shall be installed and maintained at LICENSEE's expense and shall have standard industry telemetry capabilities that will provide the COUNTY with the ability to monitor the Meter for the purpose of incorporating the System electrical output data into the energy usage database.

2.4.1.2 LICENSEE will have the Meter tested every three years at LICENSEE's expense by a certified, independent, third party approved by the COUNTY. COUNTY shall be allowed to observe the Meter test, and LICENSEE shall provide notice of the testing to the COUNTY at least ten (10) business days prior to the test date. LICENSEE shall provide signed copies of the results of the Meter test to the COUNTY. In addition to the triennial test, LICENSEE shall test the Meter at any reasonable time upon the request of the COUNTY. COUNTY shall reimburse LICENSEE for the cost of any test requested by the COUNTY, unless such testing demonstrates that the Meter was operating outside of industry standard tolerance allowances or as such defined by the Arizona Corporation Commission for meter calibration and operation.

2.4.1.3 If a Meter is determined to be inaccurate and such inaccuracy exceeds industry standard tolerance allowances, as such are defined by the Arizona Corporation Commission for electric meters, and if it is unknown when the Meter inaccuracy commenced, then the invoices covering the period of time since the last Meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one half of such period. Adjustments that benefit the COUNTY shall be reflected on the next invoice following the date of determination of the inaccuracy. Adjustments that benefit LICENSEE shall be included on LICENSEE's next invoice to the COUNTY.

2.4.2 Billing System: LICENSEE will bill COUNTY and COUNTY will pay LICENSEE for Electricity at the rate and in the manner set forth in Exhibits 1, 2, and 3.

2.4.3 Customer Service: LICENSEE will provide the following during the Term:

2.4.3.1 LICENSEE will produce and send bills to COUNTY or its designee within fifteen (15) business days after the end of each billing cycle. Invoices shall be sent to:

County Billing Contact: Rachael Ortiz	Copy Invoice To:
Section/Unit: Pima County RWRD Financial Services Accounts Payable	Section/Unit: Pima County RWRD Roger Road WRF
Attention: Rachael Ortiz	Attention: Plant Manager
Address: 201 N. Stone Avenue, Tucson,	Address: 2600 W. Sweetwater Drive,

AZ 85701	Tucson, AZ
Phone: 520-740-6814	Phone: 520-443-6421
Fax: 520-740-6553	Fax: 520-443-6422
Email: rachael.ortiz@pima.gov	Email: John.Sherlock@www.pima.gov

2.4.3.2 LICENSEE will post meter reads to a password protected web site and make this web site available to COUNTY.

2.5 Billing Validation and Verification. COUNTY may during the Term conduct occasional billing inquiries, validation and verification activities, or reconciliation procedures. During such COUNTY inquiries, activities, and procedures, LICENSEE shall provide COUNTY with the data and other information, including any billing algorithms and interval Meter data representing System output, used to generate billing determinants. COUNTY will use its best efforts to provide or arrange for Utility metered interval data and billing data and information that can support LICENSEE's billing process, either directly through a data file transmission, receipt through regular mail services, or through the appropriate and established arrangement with the Utility. For purposes of this paragraph, Parties agree that best efforts" means that the COUNTY will authorize the applicable Utility to provide metered interval data and billing data and information directly to the LICENSEE, as per the Utility's rules and applicable regulations.

### 3. TERM AND TERMINATION

The Term of this SSA shall commence on the Effective Date and end at 11:59 P.M. of the day preceding the twentieth (20th) anniversary of the Commercial Operation Date unless earlier terminated by a Party pursuant to the terms of this SSA, or pursuant to termination of the SLA.

3.1 COUNTY Termination Rights. COUNTY shall have the right to terminate the SSA as follows:

3.1.1 For Cause. COUNTY may terminate this SSA (a) pursuant to Section 11.2, below a result of LICENSEE's material default; or (b) thirty (30) days after delivery of written notice to LICENSEE and any Lender if a Force Majeure event has occurred and LICENSEE is unable to produce Electricity for more than 180 consecutive days.

3.1.2 For Convenience. In addition to the termination rights in Section 3.1.1 above, COUNTY may terminate this SSA for convenience, sixty (60) days after delivery of written notice to LICENSEE and any Lender. If COUNTY terminates this SSA for convenience pursuant to this section, COUNTY shall pay LICENSEE a Termination Fee as described and calculated in Exhibit 5 hereto.

3.1.3 Both parties acknowledge that the Arizona Constitution, Art. 15, § 2 defines the term "public service corporation" ("PSC") and the Arizona Corporation Commission ("ACC") has broad authority to regulate any such PSC. The parties further acknowledge that clear guidance does not exist regarding whether LICENSEE may be considered a PSC by the ACC based on the services provided under this SSA. Due to the

foregoing, there is a level of uncertainty that the ACC could determine that LICENSEE as a provider under this SSA is subject to regulation by the ACC as a PSC. Each party hereto covenants and agrees that in the event that the ACC determines that LICENSEE is subject to its regulation as a PSC or the ACC makes any other determination that would make it commercially unreasonable, in the sole discretion of LICENSEE, to fulfill its obligations under this Agreement or the SLA (each of the foregoing ACC determinations is referred to herein as an "ACC Determination"), both parties will discuss all commercially reasonable steps to amend this Agreement (and the SLA) or may negotiate in good faith to establish an alternative structure, arrangement and agreement whereby each party receives substantially similar consideration provided for under this Agreement. Notwithstanding the foregoing, either party may immediately terminate this SSA in the event of an ACC Determination. Furthermore, each party hereto covenants and agrees that in the event that the ACC has issued an order or guidance that declares that providers of services under agreements similar to this SSA that conform to certain criteria are not PSCs and are not subject to the ACC's regulations related thereto then both parties will take commercially reasonable steps to amend this SSA and the SLA to implement and reflect the ACC's order, guidance and criteria as soon as reasonably practicable following the issuance thereof. Notwithstanding the foregoing, COUNTY and LICENSEE shall not be required to make any amendments to this SSA or the SLA pursuant to this Section 3.1.3 that would put them in a materially adverse position to the terms and conditions of this Agreement as originally executed.

3.1.4 Termination of SLA. This SSA shall terminate simultaneously with any termination of the SLA.

3.2 LICENSEE Termination Rights. LICENSEE shall have the right to terminate this SSA at any time upon written notice to COUNTY, without further liability, if any of the following occur: a) If, prior to the first date of scheduled delivery of Electricity, LICENSEE determines that the System cannot be built as planned or that its construction and operation would not be economically viable for the LICENSEE, including LICENSEE's determination that (i) the installation of the System is not economically viable as a result of the need to comply with any environmental regulation or (ii) LICENSEE does not obtain third-party financing for the System acceptable to LICENSEE in its sole discretion or (iii) LICENSEE has not received assurance reasonably acceptable to it that LICENSEE will be able to enter into an interconnection agreement with the Utility. LICENSEE will be responsible for repairing any damage to the Facility arising from activities conducted by LICENSEE pursuant to the SSA or SLA and shall reimburse COUNTY for any direct costs associated with negotiation, review, and approval of the SSA and SLA, reasonable alteration to the physical area in or around the Facility site, and installation of the System; b) Upon occurrence of a Force Majeure event, including, but not limited to, LICENSEE's inability, after diligent efforts, to obtain or maintain required approval or permits from any governmental authority for the installation or operation of the System; c) In the event that, through no fault of LICENSEE and for other than a Force Majeure event, the System is permanently shut down due to renovation, damage, destruction, or closure of the Facility, and COUNTY and LICENSEE cannot agree upon an alternative location for the System; or d) Upon an Event of Default by COUNTY (as defined in Section 11.4). COUNTY shall pay LICENSEE a Termination Fee as described and calculated in Exhibit 5 in the event of a

termination by COUNTY under Section 3.1.2 above or pursuant to a termination under Sections 11.4.2, 13, 14 and 18.6 below. Appropriate remedies in connection with other termination events triggered by this provision will be determined pursuant to Section 11.8.

#### **4. CONFLICT OF INTEREST**

This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.

#### **5. GUARANTEE OF MINIMUM OUTPUT PERFORMANCE/TECHNOLOGY ASSESSMENTS AND UPGRADES**

LICENSEE has estimated that the System will deliver the Expected Performance Output as indicated in Exhibit 1. LICENSEE guarantees a Minimum Output Performance from the System of 90% of the Expected Performance Output from the System over the course of an Operational Year commencing with the Commercial Operation Date. If LICENSEE fails to meet the Minimum Output Performance requirement on an Operational Year basis, for reasons other than the COUNTY's shading of the System, as described in Section 13 below, LICENSEE will pay the COUNTY, or COUNTY may, at its option, offset against future payments due LICENSEE, an amount equal to COUNTY's Lost Savings. The formula for calculating Lost Savings is found in Exhibit 1 to this SSA. If LICENSEE fails to pay the COUNTY the amount due for any annual shortfall of the Guaranteed Minimum Output Performance within 60 days after notice to make such payment (and such shortfall is not under dispute by LICENSEE pursuant to written notice to COUNTY), COUNTY shall have the express right to withhold payment, up to the shortfall amount due, from any payments otherwise payable to LICENSEE for Electricity, regardless of any mortgage or assignment of payments given as security by LICENSEE under the provisions hereof. LICENSEE and COUNTY agree that System performance will degrade by an Annual Degradation Factor as indicated in Exhibit 1 Section 2 of this SSA for every year of operation. The Expected Performance Output will be reduced by the Annual Degradation Factor every Operational Year for the term of this SSA. The degradation factor will be applied to the kWh energy values of the Expected Performance Output at the beginning of each Operational Year to determine whether or not the LICENSEE has met the Minimum Output Performance guarantee at the end of the Operational Year. The degradation factor will be applied on a pro rata basis for System operations that do not span an entire Operational Year by multiplying the Annual Degradation Factor times the fraction of the Operational Year.

All services, equipment, materials or parts shall be models of current production. The output from the System shall not have any adverse effects on County electrical distribution systems or the operations or performance of existing electrical equipment and shall be free of any quality issues, including surges, undervoltage, overvoltage or harmonics conditions.

LICENSEE may perform technological and financial reviews at its discretion to determine the feasibility of upgrading the existing System utilizing improved solar products, strategies and/or solutions. Should an upgrade be deemed advantageous to LICENSEE (in its sole discretion), LICENSEE may upgrade the System or processes associated with the same at its sole expense and LICENSEE shall be entitled to the entirety of the benefit associated with or related to such upgrades. Notwithstanding anything to the contrary in this Section 5, LICENSEE may not

materially alter the System in a manner that increases the obligations or burden on the COUNTY as set forth in this SSA and the SLA, and, in particular, LICENSEE cannot undertake any upgrade that results in an increase in COUNTY's rates for power purchased from TEP.

In the alternative, LICENSEE and COUNTY may agree to jointly fund an upgrade of the System utilizing improved solar products, strategies and/or solutions. In such event, the benefit achieved as the result of such upgrade shall be allocated to LICENSEE and COUNTY in proportion to the amount each contributed to the upgrade.

## **6. POTENTIAL REVENUE FROM RENEWABLE ENERGY CREDITS (RECs)**

Unless otherwise stipulated, the LICENSEE will maintain ownership of all Renewable Energy Credits associated with this Agreement and the SLA. LICENSEE may, at its sole discretion, market these at any time. If a court of competent jurisdiction conclusively determines that future environmental attributes associated with RECs sold to TEP were improperly demanded by TEP or any of its successor in interest and are returned to LICENSEE then such environmental attributes and any value associated therewith will be shared equally between LICENSEE and COUNTY.

## **7. REBATES AND OTHER INCENTIVES**

Any grantor incentive payment, rebate or credit by the Utility, the Federal Government, the State of Arizona, or any other agency paid as a result of the design, construction, and operation of the System shall inure to the benefit of the LICENSEE or as provided in Article 6 above. COUNTY will cooperate in good faith by, among other things, taking all reasonable actions requested by LICENSEE, at no cost to COUNTY, as necessary to enable LICENSEE to obtain all available incentives and rebates, including assignment to LICENSEE of any incentive received by COUNTY, as consistent with this SSA and the SLA.

## **8. INDEMNIFICATION**

LICENSEE shall indemnify, defend, and hold harmless COUNTY, its officers, employees, and agents from and against any and all suits, actions, legal administrative proceedings, claims, or demands and all costs attendant thereto, arising out of any negligence or intentional misconduct by LICENSEE, its agents, employees, or anyone under its direction or control or on its behalf in connection with performance of this Agreement. Notwithstanding anything to the contrary contained herein, no individual representative of LICENSEE shall have any personal liability to the other party as a result of a breach of any representation, warranty, covenant or agreement contained herein.

LICENSEE warrants that the System provided under this Agreement does not infringe third-party intellectual property rights. LICENSEE will indemnify, defend, and hold COUNTY harmless from any claim of infringement of intellectual property arising from the System provided for under this Agreement.

COUNTY agrees that, from and after the execution of this Agreement, except as expressly set forth in this Agreement, with respect to any breach or violation (other than any willful, intentional or fraudulent breach or violation) by LICENSEE of any representation or warranty or covenant set forth in the Agreement, the only relief available to COUNTY for such breach in respect of such breach shall be as set forth in this Section 8. Other than as explicitly set forth in this SSA or the SLA, LICENSEE shall not be liable to COUNTY for any special, punitive, exemplary, indirect, or consequential damages, or losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with this SSA.

## 9. EMERGENCIES

In cases of emergency in which COUNTY determines that the continued operation of the System presents an imminent threat requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services, the Parties agree that COUNTY may disconnect the System from the Facility prior to notification of LICENSEE. If COUNTY disconnects the System pursuant to this provision, COUNTY will notify LICENSEE no later than eight (8) hours after the System is disconnected. The Parties agree that only LICENSEE or an agent designated by LICENSEE will be authorized to reconnect the System after the System is disconnected by COUNTY pursuant to this emergency section.

## 10. COMMUNICATIONS AND CONTACTS

The representatives of the Parties during the term of this SSA will be:

COUNTY	LICENSEE
Name: Reid Spaulding	Name: Steven Magee
Address: Pima County Facilities Management Department 150 W. Congress, 5th Flr. Tucson AZ 85701	Address: 6950 S. Country Club Road Tucson, AZ 85756
Phone: 520-740-3703	Phone: 520-807-1300 x 1066
Email: reid.spaulding@pima.gov	Email: steven.magee@solon.com
With a copy to:  Jackson Jenkins Regional Wastewater Reclamation Department 201 N Stone, 8 <sup>th</sup> Flr Tucson AZ 85701	With a copy to:  Franc Del Fosse, Esq. Snell & Wilmer L.L.P One Arizona Center Phoenix, AZ 85004 Phone: 602-382-6588 Fax: 602-382-6070

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## **11. DEFAULT**

11.1 Waiver. A waiver by either party of any term, covenant, or condition of this SSA shall not constitute a subsequent waiver of the same or any performance thereof by the other party.

11.2 Default by LICENSEE. At the option of COUNTY as the non-defaulting party, the occurrence of any of the following shall constitute a material default and breach of this SSA:

11.2.1 LICENSEE's failure to deliver Electricity from the System for a continuous period of sixty (60) days or for a cumulative ninety (90) days within any continuous six month period.

11.2.2 Unreasonable interference by LICENSEE with the operations of COUNTY at the Facility if the interference is curable by suspension of operation of the System and LICENSEE fails to suspend operation of the System within forty-eight (48) hours of COUNTY's notice to LICENSEE regarding the unreasonable interference.

11.2.3 The making by LICENSEE of any general assignment for the benefit of creditors, or the filing of a petition to have LICENSEE adjudicated as bankrupt, or the filing of a petition for reorganization or arrangement under any law relating to bankruptcy unless in the case of a petition filed against LICENSEE, the same is dismissed within sixty (60) days; or the appointment of a trustee or receiver to take possession of substantially all of LICENSEE's assets located on the Facility or of LICENSEE's interest in this SSA, when possession is not restored to LICENSEE within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of LICENSEE's assets located on the Facility or of LICENSEE's interest in the License, when such seizure is not discharged within sixty (60) days.

11.2.4 Failure by LICENSEE to perform, comply with any other material term of the SSA within ninety (90) days after written notice to LICENSEE and any Lender by COUNTY, unless COUNTY agrees in writing to a longer period to cure the default.

11.2.5 Occurrence of an Event of Default" as defined in Section 10.1 of the SLA.

11.3 COUNTY Remedies. If any default by LICENSEE shall continue uncured, following notice of default where required herein, for the period applicable to the default alleged, COUNTY may resort to any one or more of the following remedies:

11.3.1 Termination. COUNTY may terminate the SSA by providing written notice to LICENSEE indicating that the SSA and the SLA have been terminated and requesting that the System be removed and the Facility restored to the pre-installation condition subject to ordinary wear and tear. If the LICENSEE fails to remove the System and restore the Facility within one hundred twenty (120) days of notice by COUNTY, COUNTY may consider the System abandoned and may remove the System and any



other property owned by the LICENSEE from the Facility and dispose of LICENSEE's property in any manner within COUNTY's discretion, but subject to applicable law.

11.3.2 Recovery of Damages and Expenses. COUNTY may recover from LICENSEE any damages and expenses reasonably incurred as a result of LICENSEE's Default, including attorneys' fees and the cost to repair the Facility to pre-installation condition.

11.3.3 Right of Offset. COUNTY may elect to offset any damages resulting from LICENSEE's default against any monies owing or to be owed to LICENSEE under this SSA. If the COUNTY elects not to terminate the SSA and SLA following an Event of Default by LICENSEE, this election shall not constitute a waiver by COUNTY as to any subsequent Event of Default by LICENSEE.

11.4 Default by COUNTY. At the option of LICENSEE as the non-defaulting party, the occurrence of any of the following shall constitute a material default and breach of this SSA:

11.4.1 COUNTY's failure to pay undisputed invoices for a continuous period of 60 or more days.

11.4.2 The renovation, damage, destruction, or closure of the Facility for other than a Force Majeure event, which results in the permanent shutdown of the System at the Facility, if COUNTY and LICENSEE are unable to agree upon an alternative location for the System as defined in Section 13 below.

11.4.3 COUNTY's refusal to sign authorizations (and other documents) reasonably required by LICENSEE to obtain any rebate or subsidy contemplated in Section 7 above or COUNTY's refusal to sign or comply with any material term of the approved interconnection agreement required by the Utility for interconnection of the System.

11.4.4 Failure by COUNTY to perform or comply with any other material term of the SSA within sixty (60) days after written notice by LICENSEE, unless LICENSEE agrees to a longer period to cure the default.

11.4.5 COUNTY's material alteration or interference with the Electrical Interconnection Point and such failure does not result from LICENSEE's negligence or willful misconduct or failure to comply with its interconnection agreement; provided that in the event of any such material alteration or interference with the Electrical Interconnection Point by COUNTY, including relating to growth plans or changes in circumstances, COUNTY shall reimburse LICENSEE for additional Utility demand fees, labor and materials, including additional equipment related to establishing a new electrical interconnection point, and lost revenue or lost profits, including related to foregone Renewable Energy Credits, during the period in which the System does not operate.

11.4.6 The occurrence of any default by the COUNTY pursuant to Section 10.3 of the SLA.

11.5 LICENSEE Remedies. If any default by COUNTY shall continue uncured, following notice of default where required herein, for the period applicable to the default alleged, LICENSEE may resort to any one or more of the following remedies:

11.5.1 Termination. LICENSEE may terminate the SSA and the SLA by providing written notice to COUNTY indicating that the SSA and the SLA have been terminated.

11.5.2 Damages. In the event of a termination under Section 11.4.2 above, COUNTY shall pay to LICENSEE a Termination Fee, calculated as set forth in Exhibit 5. The Parties acknowledge and agree that in the Event of Default of this SSA by COUNTY, LICENSEE's actual damages would be difficult or impossible to compute and that this Termination Fee calculation provision represents the reasonable estimate of such damages established by the parties in good faith consideration of the facts and circumstances surrounding the transactions contemplated by this SSA as of the effective date.

11.5.3 Removal. In addition to the other remedies specified herein, LICENSEE may remove the System at LICENSEE's cost, provided the Facility is restored to a condition substantially similar to the pre-installation condition subject to ordinary wear and tear as called for by this SSA.

11.6 [Intentionally left blank]

11.7 Force Majeure. Any Party claiming Force Majeure with respect to its performance hereunder shall advise the other Party as soon as possible of the occurrence of the event and shall provide the other Party with the basis of the claim, in writing, within ten (10) days of the occurrence of the event. Each Party shall make reasonable efforts to avoid the adverse impacts of a Force Majeure event and to resolve the event or occurrence once it has occurred in order to resume performance

11.8 Disputes. Each party shall continue to perform its responsibilities under this SSA during any dispute, except for a dispute alleging non-payment of payments due by the COUNTY to LICENSEE. In the event that disputes arise between the Parties which cannot be resolved through conference and negotiation, such disputes shall be controlled by Arizona law and both Parties shall have the right to have the dispute adjudicated by the Arizona courts, provided however, that it shall be a condition precedent to the filing of any lawsuit that the Parties shall first submit the dispute to non-binding mediation with a qualified mediator, with relevant experience in the industry, mutually agreed to by the Parties as governed by the rules and procedures of the American Arbitration Association. The Parties shall be bound to participate in such non-binding mediation in good faith and in confidence.

## **12. TEMPORARY SHUTDOWN OF SYSTEM**

12.1 In-lieu Payments. If, during the Term, renovations or damage to the Facility occurs, for reasons other than a Force Majeure and through no fault of LICENSEE, which reduces to a level less than 98% of Expected Performance Output or eliminates the use by COUNTY of Electricity from the System or requires the temporary shutdown of the System, LICENSEE may, in its sole discretion, choose to do the following as a means of avoiding default under this SSA:

12.1.1 If such renovation or damage can be completed during the Term hereof, and if COUNTY elects to proceed with such renovation or repair, then COUNTY shall pay in lieu fees to LICENSEE during the duration of the reduction or shutdown as set forth in the next sentence. Such in-lieu fees shall equal the actual payments made by the COUNTY during the same period on a daily basis in the previous calendar year less the appropriate system degradation factor (such in lieu payments shall include the value of any lost payments associated with the RECs pursuant to the REC Purchase Agreement, regardless of whether such REC payments are being paid directly from TEP to LICENSEE or from COUNTY to LICENSEE) unless the COUNTY and LICENSEE mutually agree to an alternative in-lieu fee methodology. The in lieu payments are made to LICENSEE to offset foregone consideration in this SSA and do not entitle COUNTY to Electricity at a later date.

12.2 Notice. COUNTY will make a good faith effort to give as much notice as possible to LICENSEE prior to any act or omission to act which may occur in a shutdown of the System or reduction in the Expected Performance Output of the System below the threshold specified in Section 12.1.

## **13. PERMANENT SHUTDOWN OF THE SYSTEM AT FACILITY**

If, through no fault of LICENSEE and for reasons other than Force Majeure, the System is permanently shut down due to renovation, damage, destruction, or closure of any of the Facilities, or if COUNTY elects to relocate the System, LICENSEE shall be entitled to the following:

13.1 Notice of Shutdown. Within thirty (30) days after permanent shutdown of the System, COUNTY shall provide written notice to LICENSEE indicating whether or not the COUNTY intends to restore operation of any of the Facilities or whether relocation(s) of the System will be pursued.

13.2 Alternative Location(s) If, within ninety (90) days after permanent shutdown of the System, COUNTY and LICENSEE agree on an alternative location(s) from which LICENSEE can provide Electricity to COUNTY, then COUNTY shall pay the costs associated with relocation of the System. This alternative location(s), in the reasonable opinion of LICENSEE, shall have the potential to provide substantially similar overall system output as the original Facility, measured in total kilowatt-hours over a 12-month period, unless COUNTY and LICENSEE mutually agree that this output level is not required. If COUNTY and LICENSEE mutually agree upon an alternative location(s) that

is substantially inferior to the Facility for purposes of installation or Utility rates (assuming different portions of the Facility have different Utility rates), then the pricing formula identified in Exhibits 2 and 3 will be equitably adjusted to compensate for the alternative location(s) such that LICENSEE receives payments comparable to those which it would have received from the System at the Facility. LICENSEE shall be reimbursed for the period of System shutdown prior to relocation, if any, under the payment mechanisms specified in Section 12.1 above for Temporary Shutdown of the System. If, within sixty (60) days after permanent shutdown of the System, COUNTY and LICENSEE have not agreed upon an alternative location(s) for the System, LICENSEE may terminate this SSA and receive a Termination Fee (as defined in Section described in section 11.5.2, above, and in Exhibit 5).

#### **14. RESTRICTIONS ON SHADING**

COUNTY will make all good faith efforts to avoid activities which result in overshadowing or shading of the System in a manner that would prevent LICENSEE from meeting the Expected Performance Output as described in Exhibit 1. In the event that COUNTY's activities result in the System being overshadowed in manner that causes the System to produce less than 98% of the Expected Performance Output on a kWh basis over any twelve (12) month period, COUNTY agrees to pay "in lieu" fees up to the Expected Performance Output as described in Section 12.1.1 above for the duration of the period for which the shadowing occurs. LICENSEE shall provide and justify data that reasonably demonstrates the approximate loss of generation that occurred due to shading. In the event COUNTY reasonably determines that additional information is necessary to support LICENSEE's calculations of lost generation due to shading, COUNTY may submit a written request to LICENSEE within thirty (30) days of receipt of LICENSEE's calculations that specifies what information it believes necessary to confirm the accuracy of such calculations. If COUNTY does not deliver such written request for additional information, then COUNTY shall be deemed to agree to LICENSEE's calculations of lost generation due to shading, including any in lieu fees associated with the same. If COUNTY delivers a written request to LICENSEE for additional information, then LICENSEE and COUNTY shall work in good-faith to timely agree to an amount of lost generation due to shading, including the in lieu fees associated with the same. If LICENSEE and COUNTY cannot come to an agreement on such amounts within thirty (30) days of the delivery of COUNTY's notice, then the matter shall be submitted to binding mediation or arbitration with the proceedings governed under the provisions of the American Arbitration Association, the costs of which shall be paid by LICENSEE and COUNTY equally. Any mediator or arbitrator chosen by mutual agreement of the parties shall have requisite knowledge of the industry in which LICENSEE operates. Notwithstanding any other provision of this SSA, the Parties agree that if COUNTY's actions, directly or indirectly, result in shadowing of the System such that the System produces less than 98 percent of the Expected Performance Output, the Parties shall make every effort to relocate the System to a mutually agreeable location. If the Parties cannot agree on an alternative location for the System and the shadowing of the System is a result of COUNTY's action, then LICENSEE is entitled to a Termination Fee pursuant to Section 13, "Permanent Shutdown of the System at the Facility," and Exhibit 5. The Parties agree that shading resulting from actions outside of the control of COUNTY shall not give rise to a Termination Fee provided for in this Section.

## **15. COMPLIANCE WITH APPLICABLE LAWS, INCLUDING UTILITY INTERCONNECTION STANDARDS**

LICENSEE, at its own cost and expense, shall comply with all Applicable Laws relating to the operation of the System and the generation and sale of Electricity to COUNTY, including obtaining and maintaining all relevant approvals and permits. In particular, LICENSEE, throughout the Term of the SSA, will fully comply with any and all operational standards and requirements imposed by the Utility, and comply with the electrical interconnection requirements as stated in the applicable and controlling Utility tariff. COUNTY will cooperate with LICENSEE and, if necessary, will provide consents and execute with the Utility such agreements (if such agreements do not have unacceptable or prohibited terms and/or conditions, or impose additional costs on COUNTY) as are necessary to permit the interconnection of the System. This electrical interconnection shall be done at no cost or liability to COUNTY, and LICENSEE shall reimburse COUNTY for all reasonable out of pocket costs incurred in connection with any interconnection agreement. Should the Utility demand fees or equipment at a cost exceeding \$ 25,000 for electrical interconnection requirements, LICENSEE may at its sole discretion cease to proceed with installation of the System without further obligation to COUNTY other than obligations which were incurred prior to notice from the Utility of the fees or the equipment costs and the obligation to restore the Facility to pre-installation condition if installation was initiated.

## **16. NON-DISCRIMINATION AND AMERICANS WITH DISABILITIES ACT**

16.1 LICENSEE shall not discriminate against any COUNTY employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability, or national origin in the course of carrying out LICENSEE's duties pursuant to this Contract. LICENSEE shall comply with the provisions of Executive Orders 75-5, as amended by Executive Order 99-4, which are incorporated into this Contract by reference as if set forth in full herein.

16.2 CONTRACTOR shall comply with all applicable provisions of the Americans with Disabilities Act (or "ADA") (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

16.3 Inclusion in Subcontracts. LICENSEE represents and warrants that it shall include the substance of the nondiscrimination, ADA, and compliance provisions of this clause in all subcontracts in connection with its obligations hereunder.

## **17. TAXES**

LICENSEE shall pay all taxes, assessments or charges that at any time may be lawfully imposed upon LICENSEE as the owner of the System. COUNTY shall pay all taxes, assessments or charges that at any time may be lawfully imposed upon County including any taxes, assessments, or charges imposed upon COUNTY where LICENSEE is required to withhold or collect such imposed taxes, assessments, or charges and pay over such taxes, assessments, or charges to the

taxing authorities such as any excise taxes (is any) that are levied upon the user of Electricity and are collected by LICENSEE as the producer of such electricity and paid over to the taxing jurisdiction.

## 18. ASSIGNMENT

The duties and obligations of LICENSEE under this SSA shall not be assignable by the LICENSEE in whole or in part without the written consent of COUNTY, which consent shall not be unreasonably withheld after due diligence confirms the ability of the proposed assignee to operate and maintain the System in a manner consistent with independent solar power producers using similar standards and practices to LICENSEE. COUNTY's consent to one assignment shall not be deemed consent to any subsequent assignment.

18.1 Event of Default. In the event of default by any assignee of LICENSEE or any successor to LICENSEE in the performance of the terms hereof, COUNTY may proceed directly against LICENSEE for any claims that it may have against LICENSEE for its actions without the necessity of exhausting remedies against such assignee.

18.2 Unique Expertise. Notwithstanding the foregoing, LICENSEE acknowledges that COUNTY is relying upon the unique expertise and capability of LICENSEE. LICENSEE must demonstrate that any proposed assignee has both the financial capacity and the technical ability to perform the obligations required under the SSA at a level deemed reasonably appropriate by COUNTY and the proposed assignee is willing and sufficiently fund to assume the indemnification obligations set forth in this SSA, as reasonably determined by COUNTY

18.3 Definition of Assignment. For purposes of this section, the sale, assignment, transfer, or disposition, directly or indirectly, of any type which results in a change of control of LICENSEE shall be deemed an assignment of this SSA. Change of control shall be as defined in common law, and may be the result of a single or multiple related transactions which result in the cumulative transfer of more than fifty percent (50%) of the voting stock or equity interests of LICENSEE. However, in no event shall the transfer of shares: (i) to a Lender which assumes LICENSEE's obligations hereunder; or (ii) to another limited liability company of which LICENSEE is the managing member; or (iii) in an open market transaction sale of shares of a public held company be considered an assignment needing COUNTY's approval. LICENSEE shall have a continuing duty to provide COUNTY with written notice of any material change in the LICENSEE'S business structure and/or financial status.

18.4 Consent to Assignment. COUNTY shall consent to the assignment by LICENSEE to the Lender, of LICENSEE's right, title, and interest in and to this SSA, provided that, in the reasonable opinion of the COUNTY, the proposed assignee is reasonably capable of fulfilling LICENSEE's financial and System management obligations hereunder.

18.5 Assignment for Security. Nothing in this paragraph 18 shall: (i) prohibit LICENSEE from assigning or granting a lien on LICENSEE's rights to payments under this SSA for purposes of collateral security; or (ii) except as permitted under section 18.3 above or with

COUNTY's consent in accordance with section 18.4, above, allow LICENSEE to assign its duties and obligations under this SSA.

18.6 Assignment by COUNTY. COUNTY may assign or otherwise transfer any of its rights under this Agreement; provided, however, that if COUNTY sells, assigns or otherwise transfers ownership of the Facilities or the Licensed Area and it is determined (by an independent mediator or pursuant to the procedures in Section 11.8 hereof) that this sale, assignment or transfer materially affects LICENSEE's ability to perform its obligations hereunder or under the SLA then LICENSEE may terminate the SSA and SLA and the termination schedule set forth in Exhibit 5 hereto shall apply to any such termination by LICENSEE pursuant to this Section 18.6.

## 19. FINANCING

19.1 Non-Subordination. COUNTY will not subordinate its interest in the Facility as security for any loans or financing (a "LICENSEE Loan") provided to LICENSEE by one or more financial institutions (each a "Lender") in connection with LICENSEE's acquisition, development, construction and installation of the System; provided, however, notwithstanding the provisions of Section 19.2 below, LICENSEE may pledge or otherwise encumber LICENSEE's right, title and interest in the SSA, including any rights to payment from COUNTY under the SSA, and LICENSEE's right, title and interest in the System as security for any LICENSEE Loan. If a Lender requests additional terms and conditions to those already provided for in this SSA, COUNTY will consider any such requests, but may refuse such requests in its reasonable discretion and may withhold consent or approval of such additional terms and conditions in its reasonable discretion.

19.2 Security Interests in System. COUNTY acknowledges that LICENSEE may finance LICENSEE's acquisition, development, construction and installation of the System with a LICENSEE Loan from one or more Lenders and that LICENSEE's obligations to a Lender may be secured by, among other property, a pledge or collateral assignment of this SSA and LICENSEE's rights to payment and a first priority security interest in the System. In order to facilitate a LICENSEE Loan, and with respect to any LICENSEE Lender of which LICENSEE has notified COUNTY in writing, COUNTY agrees as follows:

19.2.1 Classification of System as Personal Property. COUNTY acknowledges that as part of the collateral securing the LICENSEE Loan, LICENSEE may grant a first priority security interest ("Security Interest") in the System to a Lender, which Security Interest may require, among other things, the filing of financing statement(s) ("Financing Statements") under the Uniform Commercial Code ("UCC") to perfect such Security Interest. COUNTY consents to the filing of any Financing Statements so long as such filings reflect the Parties' intent that the System is personal property only and is not a fixture to the Facility.

19.2.2 Neither the filing of the Financing Statements, nor any other document or instrument executed in connection with the LICENSEE Loan shall create any interest in

or lien upon the real property underlying the Facility, the Facility, or the interest of the COUNTY therein and shall expressly disclaim the creation of such an interest or a lien.

19.2.3 COUNTY will notify its successors and assigns of the ownership of the System by LICENSEE, the existence of the Lender's Security Interest, and the fact that the System is not part of the Facility or a fixture thereof.

19.2.4 With the exception of its revenue bond covenants and the conditions of its Water Infrastructure Authority of Arizona ("WIFA") loan, no lease, mortgage, security interest or other interest in or lien upon the Facility currently exists and, so long as this SSA or the SLA have not been terminated, COUNTY shall not sign any lease, mortgage, document or instrument that creates a security interest or other interest in, or lien upon, the System without LICENSEE's written consent.

## **20. AMENDMENT**

No amendment or variation of the terms of this SSA shall be valid unless made in writing, signed by the Parties and approved as required; provided, however, that the Chair of the Pima County Board of Supervisors and authorized representatives of LICENSEE are hereby authorized to execute additional agreements that are determined by both parties to be necessary to meet the goals and objectives of this Agreement. No oral understanding or agreement not incorporated in this SSA is binding on either Party.

## **21. [Intentionally left blank.]**

## **22. AUDIT**

Each Party has the right, at its sole expense and during normal working hours, to examine copies of the records and supporting documentation of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this SSA. Each Party will maintain such records for possible audit for a minimum of three (3) years, unless a longer period of records retention is stipulated. Each Party will allow the auditor(s) access to such records during normal business hours after reasonable notice and to allow interviews of any employees who might reasonably have information related to such records. If any examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

## **23. INDEPENDENT CONTRACTOR**

LICENSEE, and its agents and employees, shall act in an independent capacity and not as officers or employees or agents of the COUNTY in the performance of this SSA.



## **24. TIMELINESS**

Time is of the essence in this SSA.

## **25. GOVERNING LAW**

This contract is governed by and shall be interpreted in accordance with the laws of the State of Arizona. All actions by LICENSEE must be brought and heard in the Pima County Superior Court.

## **26. UNENFORCEABLE PROVISION**

In the event that any provision of this SSA is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this SSA have force and effect and shall not be affected thereby.

## **27. COUNTERPARTS**

This SSA may be executed in multiple copies, each of which shall be deemed an original, but all of which shall constitute one agreement after each Party has signed such a counterpart.

## **28. SCRUTINIZED BUSINESS OPERATIONS**

Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, contractor hereby certifies that it does not have scrutinized business operations in Iran or Sudan. The submission of a false certification by contractor may result in action up to and including termination of this contract.

## **29. CODE SECTION 7701(e)**

It is the intention of the parties that the provisions in this SSA shall meet all of the requirements set forth in Section 7701(e)(4) of the Internal Revenue Code of 1986, as amended (the "Code"), and any related Treasury Regulations and IRS administrative pronouncements, so that the SSA is deemed to be treated as a "service contract" and not as a "lease" pursuant to Code Section 7701(e). All duty and responsibility for such compliance rests with LICENSEE and amendments to this SSA required to achieve such compliance require COUNTY approval, with such approval not to be unreasonably withheld.

## **30. INTEGRATION**

This Agreement, along with the SLA and the Operation and Maintenance Agreement entered into on the date hereof, constitute the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the parties hereto in connection herewith and therewith, and no covenant, representation or condition not expressed in this Agreement or in the SLA shall affect, or be effective to interpret, change or restrict the express provisions of this Agreement.

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this SSA and intending to be legally bound hereby, COUNTY and LICENSEE have executed this SSA as of the Effective Date.


COUNTY:



Chairman, Board of Supervisors

DEC 16 2008

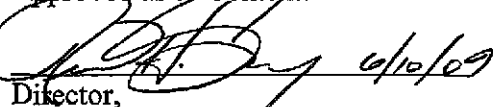
Attest:



Clerk, Board of Supervisors

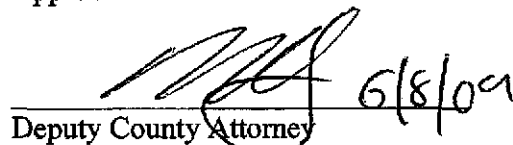
Date: DEC 16 2008

Approved as to Content:

 6/10/09

Director,

Approved as to Form:

 6/8/09

Deputy County Attorney

LICENSEE:

By: 

Olaf Koester

TITLE: President and CEO

Date: June 5, 2009



## EXHIBIT 1

### ELECTRICITY PRICING, MINIMUM OUTPUT GUARANTEES AND BILLING METHODOLOGY

#### 1. Electricity Pricing:

Site Name: Roger Road, Wastewater Reclamation Facility

LICENSEE: SOLON PM1, LLC

Price: \$0.0959/kWh

Term: Twenty (20) Years

LICENSEE's starting electricity price will be \$0.0959. This price shall be adjusted by multiplying the starting price by the escalation rate specified in the table below on each anniversary of the Commercial Operation Date for the term of the contract. In the event that County accepts electricity produced by the System prior to the Commercial Operation Date, County shall also pay the rate identified below for any accepted electricity.

Year	Escalation Rate (%)	Price (\$/kWh)
1	0	\$0.0959
2	0	\$0.0959
3	0	\$0.0959
4	0	\$0.0959
5	0	\$0.0959
6	0	\$0.0959
7	0	\$0.0959
8	0	\$0.0959
9	0	\$0.0959
10	0	\$0.0959
11	0	\$0.0959
12	0	\$0.0959
13	0	\$0.0959
14	0	\$0.0959
15	0	\$0.0959
16	0	\$0.0959
17	0	\$0.0959
18	0	\$0.0959
19	0	\$0.0959
20	0	\$0.0959

(Other Options available per SOLON Proposal)

First year will be based on 12 full months from Commercial Operation Date.

2. Expected Performance Output for the First and Subsequent Operational Years:

For the first Operational Year the Expected Performance Output is:

Electricity: **2,021,032** Total kWh (AC)

The Guaranteed Minimum Output Performance shall be calculated as 90% of the Expected Performance per Section 5 of this SSA and as tabulated below.

Project Electricity Output

Year	Expected Performance Output	Guaranteed Minimum Output
1	<b>2,021,032</b>	<b>1,818,929</b>
2	<b>2,010,927</b>	<b>1,809,834</b>
3	<b>2,000,872</b>	<b>1,800,785</b>
4	<b>1,990,868</b>	<b>1,791,781</b>
5	<b>1,980,914</b>	<b>1,782,822</b>
6	<b>1,971,009</b>	<b>1,773,908</b>
7	<b>1,961,154</b>	<b>1,765,039</b>
8	<b>1,951,348</b>	<b>1,756,213</b>
9	<b>1,941,591</b>	<b>1,747,432</b>
10	<b>1,931,883</b>	<b>1,738,695</b>
11	<b>1,922,224</b>	<b>1,730,002</b>
12	<b>1,912,613</b>	<b>1,721,352</b>
13	<b>1,903,050</b>	<b>1,712,745</b>
14	<b>1,893,535</b>	<b>1,704,181</b>
15	<b>1,884,067</b>	<b>1,695,660</b>
16	<b>1,874,647</b>	<b>1,687,182</b>
17	<b>1,865,273</b>	<b>1,678,746</b>
18	<b>1,855,947</b>	<b>1,670,352</b>
19	<b>1,846,667</b>	<b>1,662,001</b>
20	<b>1,837,434</b>	<b>1,653,691</b>

First year will be based on 12 full months from Commercial Operation Date

3. Calculation of Lost Savings Payment to County

The first year shall be defined as 12-months from the Commercial Operation date and will also define the commencement date of each subsequent year during the term of this agreement. Calculation for each complete prior year, and payment if due, shall be documented and submitted to County by the Licensee within 60 calendar days after the commencement of each year.

MOP = The Minimum Output Performance, quantity of annual kWh, for each year as tabulated above

AE = the quantity of electricity in kWh actually delivered by the LICENSEE to the COUNTY

LE = Lost Energy in kWh = MOP less AE

Note: If LE quantity is zero or less, AE is greater than MOP, no loss was incurred by COUNTY and no payment is due to COUNTY. If LE value is positive, AE is less than MOP, then lost consideration has been incurred by the COUNTY and payment is due from LICENSEE as follows:

ATP = Annual average local utility tariff price (\$/kWh) applicable to the County during the year being measured. This value is determined by dividing the total cost for delivered electricity billed by the Energy Service Provider during the previous 12 month period by the total quantity of KWH's delivered to the COUNTY by the Energy Service Provider

ACP is the price paid to LICENSEE by COUNTY for period, presently contracted to be \$0.959/kwh.

PD = Payment Due from LICENSEE = (ATP less ACP) multiplied by LE

Note: ATP must be greater than ACP for this Payment Due calculation to be valid.

#### 4. Electricity Purchase and Sales.

##### a. General Provisions:

LICENSEE will generate, deliver and sell Electricity, when available from the System, to the COUNTY at the Electrical Interconnection Point during the term of this SSA.

LICENSEE agrees to generate, deliver and sell a quantity of Electricity as noted in Exhibit 1 Section 2 (above) and as guaranteed in SSA Section 5 to the COUNTY from the System and COUNTY agrees to purchase Electricity as measured at the Electrical Interconnection Point.

##### b. Formulas for Pricing:

LICENSEE shall prepare invoices in accordance with the formulas set forth in Exhibit 2 in the format set forth in Exhibit 3. LICENSEE shall render to COUNTY an invoice each month for the preceding billing period during the Term of this SSA setting forth the actual amount of kWh delivered (Actual Production") and the amounts due LICENSEE for Electricity generated and delivered by the System. COUNTY will remit full payment with each invoice to LICENSEE, subject to any offsets for Guaranteed Minimum Output shortfalls, due under SSA, Section 5.

In the event COUNTY disputes all or any part of any bill submitted by LICENSEE under this SSA, COUNTY shall pay the undisputed portion of the invoice when due and shall notify LICENSEE in writing within three (3) months from the date of receipt of any disputed invoice or adjusted invoice. The Parties shall use best efforts to resolve the dispute amicably and promptly, and upon determination of the correct billing amount, COUNTY shall promptly pay or be paid the remaining portion or refund due (if any), with interest at the Interest Rate from the date payment was due until paid (in the case of an underpayment) or from the date paid until refunded (in the case of an overpayment). Late payment fees shall not be applied to amounts that are subject to a good faith dispute until the dispute is resolved and interest is calculated in accordance with this Section. In the event that disputed amounts cannot be resolved through the process of conference, disputes shall be addressed through the process provided in Section 11.8 of the SSA.

LICENSEE shall submit invoices to the COUNTY at the address as set forth below. LICENSEE shall also submit a duplicate invoice (copy only) to the COUNTY at the address as noted on the subsequent page.

*Received by*  
*[Signature]*  
*[Signature]*  
PCROCU JUN18'09AM10:58

**Billing Contacts**

<b>County Billing Contact: Rachael Ortiz</b>	<b>Copy Invoice To:</b>
<b>Section/Unit: Pima County RWRD Financial Services Accounts Payable</b>	<b>Section/Unit: Pima County RWRD Roger Road WRF</b>
<b>Attention: Rachael Ortiz</b>	<b>Attention: Plant Manager</b>
<b>Address: 201 N. Stone Avenue, Tucson, AZ 85701</b>	<b>Address: 2600 W. Sweetwater Drive, Tucson, AZ</b>
<b>Phone: 520-740-6814</b>	<b>Phone: 520-443-6421</b>
<b>Fax: 520-740-6553</b>	<b>Fax: 520-443-6422</b>
<b>Email: rachael.ortiz@pima.gov</b>	<b>Email: John.Sherlock@wwm.pima.gov</b>

**Payment Address Notice:**

COUNTY shall submit all payments under this SSA to LICENSEE's project representative at the address listed in SSA Section 9. Parties agree that if COUNTY receives notification to change the LICENSEE's designated address for purposes of payment, COUNTY will notify the project representative at the address listed in SSA Section 9 and any Lender designated by LICENSEE pursuant to Section 12.1.1 of the SLA at least sixty (60) days prior to the first submittal of payment to the new address. Parties also agree that COUNTY will submit payments under this SSA by electronic funds transfer when electronic transfer becomes a readily available payment method for the COUNTY.

## EXHIBIT 2

### BILLING FORMULAS AND EXAMPLES

LICENSEE shall provide invoices as indicated in this Exhibit and shall indicate the source and calculation of each variable set forth below in a manner so that the COUNTY can readily confirm the accuracy and appropriateness of each invoice. An example of a monthly invoice is attached as Exhibit 3 to this SSA.

The total invoice for Electricity delivered by LICENSEE for the month in question shall be determined as follows:

$$P = AE * ACP$$

Where:

P = Monthly payment made to LICENSEE for electricity delivered during the billing period.

AE = The quantity of electricity in kWh actually delivered by the LICENSEE to the COUNTY during the billing period

ACP is the contract price for the monthly or quarterly billing period in \$/kWh as set forth in Exhibit 1

**EXHIBIT 3**

**SAMPLE SOLAR INVOICE**

Facility Name  
Facility Contact Person  
Facility Address

Account #  
Meter #

Start Date	End Date	Start Meter Read	End Meter Read	Total kWh
Mo/Day/Year				

Contract Price: \$/kWh  
Total Cost of Solar Power Delivered: \$  
Net due to LICENSEE



1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100



**EXHIBIT 4**

**[NOT USED]**



*[Handwritten mark]*

## EXHIBIT 5

### TERMINATION FEE SCHEDULE AND PURCHASE OPTION

In the event of a termination of this SSA pursuant to Sections 3.1.2, 11.4.2, 13.2, 14, or 18.6 COUNTY shall pay to LICENSEE an Early Termination Payment corresponding to the year in which early termination occurs.

The Early Termination Payment shall be calculated as outlined below.

Early Termination Payment = Net Present Value of the annual contract price (per site) multiplied by the Guaranteed Minimum Output, less the operating costs avoided due to the early termination, for each of the remaining years of the contract. The Early Termination Payment is also intended to include the amount of "recapture" damages imposed by the Internal Revenue Service upon LICENSEE (or its assigns or successors) in connection with the Investment Tax Credit (or related cash grants) as a result of an early termination by COUNTY.

If an early termination occurs on date other than an anniversary of the Commercial Operation Date, the unpaid amount for that year will be calculated by multiplying the Early Termination Payment by a simple ratio of the number of months remaining until the anniversary of the Commercial Operation Date divided by 12 months.

#### Termination for Convenience

Year of Termination	Early Termination Payment	Purchase Option Price
1	\$ 4,111,463	\$ 2,426,484
2	\$ 3,649,472	\$ 2,479,273
3	\$ 3,185,639	\$ 2,365,473
4	\$ 2,713,229	\$ 2,432,602
5	\$ 2,249,510	\$ 2,561,099
6	\$ 1,777,951	\$ 2,683,374
7	\$ 1,685,920	\$ 689,519
8	\$ 1,583,436	\$ 652,466
9	\$ 1,492,672	\$ 599,890
10	\$ 1,296,271	\$ 648,966
11	\$ 1,202,227	\$ 591,509
12	\$ 1,154,284	\$ 483,574
13	\$ 1,072,238	\$ 405,155
14	\$ 956,874	\$ 355,250
15	\$ 834,267	\$ 307,552
16	\$ 709,280	\$ 256,960
17	\$ 678,584	\$ 106,550
18	\$ 642,555	\$ 105,419
19	\$ 300,991	\$ 104,288
20	\$ 153,672	\$ 52,295

**Purchase option:** It is intended by the parties that the above amounts set forth in the "Purchase Option Price" column will be the "fair market value" of the System on a date determined by the LICENSEE within nine months of the time of termination. In the event COUNTY has paid the appropriate Early Termination Payment as provided in

the above table, and elects to acquire the System by paying the Purchase Option Price for the System, title to the System shall pass to COUNTY; provided, however, that it is understood by the parties that LICENSEE's designated tax advisors must make a final reasonable determination that the Purchase Option Price for the System is actually at or above "fair market value," as such term is defined under applicable Internal Revenue Service rules and regulations, at the time the System is purchased; provided, further, that if it is reasonably determined by LICENSEE's designated tax advisors that the Purchase Option Price for the System is below "fair market value" then COUNTY must pay the remaining fair market value of the System (above the initial Purchase Option Price) to LICENSEE if it wishes to acquire the system.

**Exhibit 6**

**SOLAR LICENSE AGREEMENT**

**[AS ATTACHED]**

*Ke*

**PIMA COUNTY DEPARTMENT OF FACILITIES  
MANAGEMENT**

**PROJECT:** Solar Services Agreement

**CONTRACTOR:** SOLON PM1, LLC

**CONTRACT NO.:** 11 -13 -S -142106 -0609

**CONTRACT AMENDMENT NO.:** One (1)

**CONTRACT AMENDMENT DATE:** November 30, 2009

**CONTRACT**

**NO.** 11.13.S-142106-0609

**AMENDMENT NO.** 01

This number must appear on all  
invoices, correspondence and  
documents pertaining to this  
contract.

**ORIG. CONTRACT TERM:** 06/08/09-06/08/2029  
**TERMINATION DATE PRIOR AMENDMENT:** N/A  
**TERMINATION THIS AMENDMENT:** N/A

**ORIG. CONTRACT AMOUNT:** N/A  
**PRIOR AMENDMENTS:** N/A  
**AMOUNT THIS AMENDMENT:** N/A  
**REVISED CONTRACT AMOUNT:** N/A

**SOLAR SERVICES AGREEMENT  
AMENDMENT NO. 1**

WHEREAS, on June 8, 2009, COUNTY and LICENSEE entered into that certain Solar Services Agreement (the

beneficiary of the REC payments under the REC Agreement and shall receive such payments directly from TEP.

LICENSEE shall indemnify, defend and hold COUNTY harmless against any and all suits, actions, legal or administrative proceedings, claims, demands, or damages of any kind or nature arising out of the REC Agreement. Any failure by LICENSEE to perform its material duties and obligations under the REC Agreement that result in a termination of the REC Agreement shall constitute a default by LICENSEE under Section 11 of this SSA and may be handled consistent with either Section 11.3.2 or Section 11.3.3 of this SSA to the extent the indemnity provided hereunder is insufficient. Notwithstanding the foregoing, LICENSEE shall not be responsible for, or be required to indemnify or hold harmless COUNTY with respect to, suits, actions, claims, demands or damages of any kind related to any breach or termination of the REC Agreement as a result of COUNTY's (or its employees' or agents') negligent, intentional or reckless actions. Other than those claims or suits resulting from the gross negligence, intentional or reckless actions of COUNTY (or its employees or agents), LICENSEE forever waives any claim, suit or other action against COUNTY arising out of the terms and conditions of the REC Agreement; provided, however, that nothing in this sentence is intended to alter claims or suits that may arise out of the terms and conditions of this SSA or the SLA. The provisions of this paragraph shall survive the termination of this SSA, the SLA, and the termination of the REC Agreement for a period of one (1) year, or for a period of time not to exceed the remainder of any statute of limitations applicable to any claim against COUNTY under this Section 6, whichever is longer.

In the event that the REC Agreement is terminated or expires, LICENSEE may, at its sole discretion, market these RECs generated pursuant to this SSA at any time and in any matter. In addition, LICENSEE has any rights to environmental attributes produced, generated or created by the System, which are not deemed to be sold to TEP pursuant to the REC Agreement. During the term of the REC Agreement, if a court of competent jurisdiction conclusively determines that future environmental attributes associated with RECs sold to TEP were improperly demanded by TEP or any of its successors in interest and are returned to LICENSEE then such environmental attributes and any value associated therewith will be shared equally between LICENSEE and COUNTY.

**Section 3.** Section 2.2 of the SSA is hereby amended and restated in its entirety to read as follows:

2.2 Purchase of Electricity by COUNTY. Consistent with LICENSEE's obligations above to sell to COUNTY all Electricity supplied by the System during the Term, COUNTY will purchase from LICENSEE all Electricity supplied by the System during the Term, with pricing as set forth in Exhibit 1. COUNTY represents and warrants that it has received all necessary authorizations and approvals required to enter into this SSA and when executed the SSA and SLA will be binding upon the COUNTY.

**Section 4.** Section 2.4 of the SSA is hereby amended and restated in its entirety to read as follows:

2.4 LICENSEE will provide the services as set forth below in this Section.

**Section 5.** The following sentences shall be added to the end of the opening paragraph of Section 3 of the SSA (above Section 3.1):

Exhibit 5 of this SSA, sets forth a Termination Fee and Purchase Option Price for the System in connection with termination of this SSA. For the sake of clarity, the Purchase Option Price set forth in Exhibit 5 shall only be paid in the event that COUNTY intends to purchase the System, consistent with the terms of this SSA, and such Purchase Option Price would be in addition to the Termination Fee owed, if any.

**Section 6.** The Parties agree that for purposes of the SSA (including Section 5 of the SSA) "Annual Degradation Factor" shall mean the decrease in the Expected Performance Output from year to year as set forth in the table in Section 2 of **Exhibit 1** of the SSA.

**Section 7.** Section 11.3.2 of the SSA is hereby amended and restated in its entirety to read as follows:

11.3.2 Recovery of Damages and Expenses. Subject to the limitations of Section 8, COUNTY may recover from LICENSEE any damages and expenses reasonably incurred as a result of LICENSEE's Default, including attorneys' fees and the cost to repair the Facility to pre-installation condition.

**Section 8.** Section 12.1.1 of the SSA is hereby amended to include the following sentence at the end of such provision:

A corresponding reduction shall be made to the Guaranteed Minimum Output required under this SSA to reflect the reduction in performance or production of Electricity, if any, due to such renovations or damages or temporary shutdowns to the Facility discussed in this Section 12.

**Section 9.** Section 13.2 of the SSA is hereby amended to include the following sentence at the end of such provision:

A corresponding reduction shall be made to the Guaranteed Minimum Output required under this SSA to reflect the reduction in performance or production of Electricity, if any, due to any shutdown period that occurs pursuant to this Section 13.

**Section 10.** The following sentence shall be added to the end of the opening paragraph of Section 18 of the SSA (above Section 18.1):

Any assignment of this SSA by LICENSEE (or any future assignees) shall also be deemed an assignment of the SLA (unless otherwise agreed in writing by the parties) and consent to assignment of this SSA by COUNTY shall also be deemed a consent to assignment of the SLA.

**Section 11.** Section 1 of **Exhibit 1** of the SSA is hereby amended and restated in its entirety to read as follows:

1. Electricity Pricing:

Site Name: Roger Road, Wastewater Reclamation Facility

LICENSEE: SOLON PM1, LLC

Price: \$0.0959/kWh

Term: Twenty (20) Years

LICENSEE's will supply Electricity Price of \$0.0959/kWh for the Term of the SSA. In the event that County accepts Electricity produced by the System prior to the Commercial Operation Date, County shall also pay this identified rate.

**Section 12.** In connection with the REC Agreement and the REC Assignment Agreement and LICENSEE's obligations under this SSA, COUNTY agrees as follows:

(A) It shall reasonably cooperate with LICENSEE in order for LICENSEE to meet its obligations under the REC Assignment Agreement and this SSA;

- (B) Without the prior written consent of LICENSEE, it shall not amend or modify the REC Agreement;
- (C) It shall promptly provide upon receipt from TEP, any written or other notices received from TEP in connection with the REC Agreement; and
- (D) It shall not settle any claims or suits brought by TEP in connection with the REC Agreement without the prior consent of LICENSEE and LICENSEE shall be permitted to control the defense of the COUNTY in connection with any claim brought by TEP against the COUNTY in connection with the REC Agreement.

**Section 13.** Section 19.2.5 shall be added to the SSA and shall read as follows:

In connection with any collateral assignment of this SSA to a Lender, COUNTY will be bound by the "lender accommodations" described in Exhibit A to Amendment No.1 to the SSA. LICENSEE's Lender shall be a third party beneficiary of this Section 19.2.5.

**Section 14.** Except as specifically amended pursuant to the terms of this Amendment, the terms and provisions of the SSA shall remain in full force and effect. The effective date of this Amendment shall be the date first written above.

**Section 15.** This Amendment may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart.



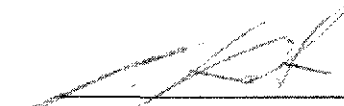
IN WITNESS THEREOF, the parties have affixed their signatures to this Amendment No. 1 on the dates written below.

APPROVED:

  
\_\_\_\_\_  
Chair, Board of Supervisors

DEC 16 2008  
\_\_\_\_\_  
Date

CONTRACTOR:

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Name and Title (Please Print)

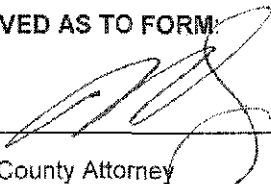
11-25-08  
\_\_\_\_\_  
Date

ATTEST

  
\_\_\_\_\_  
Clerk of Board

DEC 16 2008  
\_\_\_\_\_  
Date

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy County Attorney

11/30/09  
\_\_\_\_\_  
Date

## **EXHIBIT A**

### **LENDER ACCOMODATIONS**

#### **Certain Agreements for the Benefit of the Financing Parties**

Notwithstanding anything else contained in the SSA or SLA, COUNTY acknowledges that LICENSEE will be financing the installation of the System either through a lessor, Lender or with financing accommodations from one or more financial institutions and that the Licensee may sell or assign the System and/or may secure the Licensee's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such financial institutions of which LICENSEE has notified COUNTY in writing COUNTY agrees as follows:

(a) Consent to Collateral Assignment. COUNTY consents to either the sale or conveyance to a lessor or the collateral assignment by LICENSEE to a Lender that has provided financing of the System, of the Licensee's right, title and interest in and to this Agreement.

(b) Notices of Default. COUNTY will deliver to the Lender, concurrently with delivery thereof to LICENSEE, a copy of each notice of default given by COUNTY under the Agreement, inclusive of a reasonable description of LICENSEE default. No such notice will be effective absent delivery to the Lender. COUNTY will not mutually agree with LICENSEE to terminate the Agreement without the written consent of the Lender, but notwithstanding any provision to the contrary in this Exhibit A, may unilaterally terminate this SSA or the SLA (collectively, the "Agreements") as provided for by the terms and conditions of the Agreements.

(c) Rights Upon Event of Default. Notwithstanding any contrary term of this Agreement:

i. The Lender, as collateral assignee, shall be entitled to exercise, in the place and stead of LICENSEE, any and all rights and remedies of LICENSEE under this Agreement in accordance with the terms of this Agreement and only in the event of LICENSEE's or COUNTY's (or any successor in interest for either party) default. The Lender shall also be entitled to exercise all rights and remedies of secured parties generally with respect to the Agreements and the System.

ii. The Lender shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Licensee thereunder or cause to be cured any default of Licensee thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Lender to cure any default of Licensee under this Agreement or (unless the Lender has succeeded to Licensee's interests under this Agreement) to perform any act, duty or obligation of Licensee under this Agreement, but COUNTY hereby gives it the option to do so.

iii. Upon the exercise of remedies under its security interest in the System, including any sale thereof by the Lender, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Licensee to the Lender (or any assignee of the Lender) in lieu thereof, the Lender shall give notice to COUNTY (or any successor in interest) of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement.

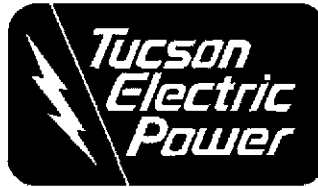
iv. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to LICENSEE under the United States Bankruptcy Code, at the request of the Lender made within ninety (90) days of such termination or rejection, COUNTY (or any successor in interest) shall enter into a new agreement with the Lender or its assignee having the same terms and conditions as this Agreement, provided that Lender or Lender's assignee, in sole discretion of COUNTY (or any successor in interest), is deemed reasonably capable of operating and maintaining the System

(d) Right to Cure.

i. COUNTY (or any successor in interest) will not exercise any right to terminate or suspend this Agreement unless it shall have given the Lender prior written notice by sending notice to the Lender (at the address provided by Licensee) of its intent to terminate or suspend this Agreement, specifying the condition giving rise to such right, and the Lender shall not have caused to be cured the condition giving rise to the right of termination or suspension within the periods provided for in this Agreement. The parties respective obligations will otherwise remain in effect during any cure period; provided that if such Licensee default reasonably cannot be cured by the Lender within such period and the Lender commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed additional thirty (30) days.

ii. If the Lender (including any purchaser or transferee), pursuant to an exercise of remedies by the Lender, shall acquire title to or control of LICENSEE's assets and shall, within the time periods described in sub-section (c)(i) directly above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

## EXHIBIT B



A UniSource Energy Company

**Non-Residential  
20 kW or Greater Solar Program Grid-Tied  
Performance Based Incentive  
Renewable Energy Credit Purchase Agreement**

This Non-Residential 20 kW or Greater Solar Program Grid-Tied Performance Based Incentive Renewable Energy Credit Purchase Agreement (the "Agreement") is hereby made and entered into as of the ~~30th~~ day of ~~November~~ 2009 (the "Effective Date"), by and between Tucson Electric Power Company, an Arizona corporation ("Company"), and Pima County, a political subdivision of the State of Arizona ("Customer"). Company and Customer may be referred to individually herein as a "Party" or collectively as the "Parties."

**RECITALS**

A. Company desires to increase the number of renewable electricity generation facilities and the consumption of renewable electricity within its service territory, while concurrently reducing the cost of renewable electric generation systems for its customers;

B. Customer intends to install, maintain and own a renewable electricity generation facility, or otherwise have title to the RECs (as defined below) associated with such facility;

C. Company is subject to certain state regulatory requirements governing its use of renewable resources to supply energy to its customers, including those provided under the Renewable Energy Standard and Tariff (as defined below);

D. To further Company's continuing commitment to develop and encourage the use of renewable energy resources and to better ensure compliance with regulatory requirements, Company has implemented the Tucson Electric Power Renewable Energy Credit Purchase Program to provide financial incentives to its customers to install renewable generating equipment; and

E. Customer desires to participate in the Program and to sell to Company the RECs associated with Customer's renewable generation facility and Company desires to purchase such RECs under the terms and conditions contained in this Agreement.

*Reference Contract # 11-13-S. 142106-0609*

**AGREEMENT**

**1. DEFINITIONS**

- 1.1. "Annual Contract Quantity" means the Contract Quantity divided by the number of years in the Term, which is equal to 1,927,853 kWh.
- 1.2. "Commissioning Package" means written verification signed by the Customer System installer and the Customer confirming that the Customer System has been installed in conformance with the Customer's approved Program reservation and is ready for operation.
- 1.3. "Contract Quantity" means 38,557,055 kilowatt-hours ("kWh").
- 1.4. "Customer System" means the 1 MW output (DC) photovoltaic renewable electricity generation facility located at the Premises.
- 1.5. "Installation Deadline" means the date that is three hundred sixty-five (365) days after the Reservation Confirmation Date.
- 1.6. "Minimum Contract Quantity" means fifty percent (50%) of the Annual Contract Quantity, which is equal to 963,926.5 kWh per year average over 20 years.
- 1.7. "Premises" means Customer's facilities located at the Pima County Roger Road Waste Water Facility, Arizona.
- 1.8. "Program" means the Tucson Electric Power Renewable Energy Credit Purchase Program in effect as of the Effective Date.
- 1.9. "Reservation Confirmation Date" means the date Customer's Program reservation request is approved by Company under the Program.
- 1.10. "REC" means any and all environmental credits, attributes and benefits, including greenhouse gas or emissions reductions and any associated credits, environmental air quality credits, offsets, allowances and benefits howsoever entitled, actual SO<sub>2</sub>, NO<sub>x</sub>, CO<sub>2</sub>, CO, Carbon, VOC, mercury, and other emissions avoided, credits towards achieving local, national or international renewable portfolio standards, green tags, and any and all other green energy or other environmental benefits associated with the generation of renewable energy (regardless of how any present or future law or regulation attributes or allocates such characteristics), including those created under the REST (as defined below).
- 1.11. "Renewable Energy Standard and Tariff" or "REST" means the Arizona Renewable Energy Standard and Tariff codified at A.A.C. R14-2-1801 *et. seq.*, as may be amended from time to time.

1.12. "System Qualifications" means the Program Requirements set forth in Attachment A and Attachment B, each of which are attached hereto and incorporated herein.

1.13. "Term" shall have the meaning set forth in Section 14.1 below.

## **2. CUSTOMER RENEWABLE ENERGY SYSTEM**

Customer or its designee has constructed the Customer System at the Premises. Customer or its designee owns the Customer System and will be solely responsible for its cost, operation and maintenance. The Parties acknowledge and agree that to qualify for participation in the Program the Customer System must comply with all System Qualifications and Program requirements.

## **3. SYSTEM INSTALLATION**

The Customer System must have been installed by a qualified installer in accordance with the installation requirements set forth in the System Qualifications and the Program, including without limitation, a proper interconnection with Company's power grid. Customer or its designee shall be solely responsible for the installation of the Customer System, including selecting a qualified installer, and paying all associated installation costs and expenses.

## **4. SYSTEM INSPECTION**

Customer will notify Company when the installation of the Customer System is complete by providing Company with a Commissioning Package and a copy of the applicable construction permits associated with the installation. Company shall thereafter inspect the Customer System to verify the installation and system performance are in compliance with the System Qualifications ("Conformance Inspection"). If the Company determines the Customer System is not in compliance with the System Qualifications consistent with the terms and conditions of Attachments A and B, Company will notify Customer of such noncompliance. Company will have no further obligation under this Agreement until all such deficiencies are remedied by Customer to Company's reasonable satisfaction and the Customer System is in compliance with the System Qualifications.

Upon notice to Customer, Company shall have the right to conduct annual inspections of the Customer System as reasonably necessary during the Term to verify compliance with the System Qualifications. Customer shall provide Company with reasonable access to the Customer System to conduct any such inspection.

## **5. PERFORMANCE BASED INCENTIVE PAYMENT**

5.1. Conditions Precedent. Subject to Customer's execution and delivery of this Agreement and the Customer System passing the Conformance Inspection by the Installation Deadline, Company shall pay Customer the performance based incentive ("PBI") as described in this Section 5.

5.2. **Contract Quantity and Price.** Company shall pay Customer \$0.15 for each delivered REC associated with each kWh of energy produced by the Customer System up to the Contract Quantity. The amount of any RECs derived from the Customer System and the resultant PBI payment shall be calculated based on the metered AC kWh of net renewable energy produced by the Customer System.

5.3. **Payments.** The Company will make the first PBI payment hereunder within thirty (30) days of the end of the first calendar quarter after the Customer System passes the Conformance Inspection. The Customer expressly and irrevocably agrees that any PBI payments or other payments for RECs hereunder to which the Customer is entitled to are hereby assigned to SOLON PM1, LLC. The Company expressly agrees that it shall make such payments directly to SOLON PM1, LLC at the below address (or such other address as designated in writing by SOLON PM1, LLC):

SOLON PM1, LLC  
6950 S. Country Club Road  
Tucson, AZ 85756  
Attention: Finance Department

PBI payments shall be made within thirty (30) days of the beginning of each calendar quarter thereafter based on the metered AC kWh of net renewable energy produced by the Customer System in the previous calendar quarter. Provided, if the PBI owing for a particular calendar quarter is less than \$25.00, Company will carry over such amount until the earlier of the next payment due date that the current PBI plus any carry-over amount exceeds \$25.00, or when at least twelve (12) months have elapsed since the last PBI payment. Notwithstanding the foregoing, Company reserves the right to make PBI payments more frequently than quarterly (e.g., monthly) upon notice to Customer (and its payment assignee above). Company shall be obligated to pay Customer (or its assignee) the PBI for RECs delivered hereunder until the earlier of: (i) the expiration or termination of this Agreement; or (ii) when the Company has purchased the Contract Quantity of RECs.

## **6. RENEWABLE ENERGY CREDIT TRANSFER**

Subject to the provisions of Section 15.10 below, Customer hereby assigns and transfers to Company any and all RECs derived from the installation and use of the Customer System. Unless otherwise agreed by the Parties, the RECs shall be deemed to be transferred at such time Customer or its assignee receives the PBI payment associated with such RECs. Company's right to RECs hereunder shall commence when the Customer System passes the Conformance Inspection and continue thereafter for the Term of the Agreement.

## **7. OWNERSHIP OF RENEWABLE ENERGY CREDITS**

Customer shall not sell, trade, assign or otherwise transfer any RECs derived from the installation and use of the Customer System to any party other than Company during such time Company is entitled to receive such RECs hereunder. Upon Company's request, Customer or its designee shall provide Company with reasonable documentation evidencing



its ownership of such RECs and transfer thereof to Company. Except for the representation and warranty provided by Customer under Section 11 below, in no event shall such documentation require Customer to provide representations or warranties of any kind regarding the nature and quality of the RECs or whether the RECs meet the REST requirements, and shall only evidence that Customer is transferring such RECs as have been transferred to Customer by its assignee.

**8. SYSTEM ELECTRICAL OUTPUT**

The transfer of rights concerning the electrical output of the Customer System is addressed in a separate agreement hereto.

**9. CUSTOMER SYSTEM REMOVAL**

Neither the Customer System nor any components thereof may be removed from the Premises during the Term without Company's prior written consent. If the Customer System is removed from the Premises in violation of this Section 9, Customer shall immediately reimburse Company for any PBI amounts paid to Customer hereunder for which Company has not received the associated RECs. In addition, any such removal of the Customer System shall constitute a material breach of this Agreement.

**10. METER READING**

No less than once per year during the Term, Company shall read the Customer System renewable energy production meter for the purpose of determining the payment amount under Section 5 above. Customer shall provide Company with reasonable access to the Customer System to conduct any such readings.

**11. CUSTOMER REPRESENTATIONS**

Customer hereby represents and warrants to Company that Customer has not sold, traded, assigned or otherwise transferred any RECs associated with the Customer System to any party other than Company. This representation is true and correct as of the Effective Date and will be true and correct at the time of any transfer by Customer to Company of any RECs hereunder.

**12. WARRANTY**

**COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND HEREUNDER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ITS PERFORMANCE HEREUNDER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE CUSTOMER SYSTEM, ITS OPERATION, SAFETY, INSTALLATION OR COMPLIANCE WITH ANY BUILDING OR SAFETY CODES, RULES OR REGULATIONS, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW,**

**COMPANY HEREBY EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY ASSOCIATED THEREWITH.**

**13. LIMITATION OF LIABILITY**

**THE PARTIES' ENTIRE LIABILITY ARISING OUT OF THEIR RESPECTIVE PERFORMANCE UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES. NEITHER PARTY SHALL IN ANY EVENT BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGE, HOWEVER CAUSED, RESULTING FROM THEIR PERFORMANCE UNDER THIS AGREEMENT. COMPANY FURTHER AGREES THAT AT THE TIME OF CUSTOMER'S ASSIGNMENT OF ANY OF ITS RIGHTS OR DUTIES HEREUNDER TO SOLON PM1 LLC ("SOLON"), COMPANY WILL RELEASE CUSTOMER FROM ANY CLAIM AGAINST CUSTOMER ARISING OUT OF THE BREACH ANY SUCH ASSIGNED RIGHTS OR DUTIES.**

**14. TERM AND TERMINATION**

14.1. This Agreement shall commence on the Effective Date and, unless earlier terminated as provided herein, shall continue for the number of years in the term selected by Customer in the Customer's Program application relating to the Customer System after the Customer System passes the Conformance Inspection (the "Term").

14.2. Either Party may terminate this Agreement:

i. on thirty (30) days written notice in the event the other Party commits a material breach of this Agreement or the Program and fails to cure the same within such thirty (30) day period.

ii. immediately in the event that the other Party: (a) makes an assignment or any general arrangement for the benefit of creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under the bankruptcy or similar law for the protection of creditors, or have such petition filed against it and such proceeding remains undismissed for 30 days after filing; or (c) otherwise becomes bankrupt or insolvent (however evidenced).

iii. as provided in Section 15.8 below.

iv. immediately by Customer upon written notice to Company, and without penalty of any kind to Customer, in the event Company refuses to consent to Customer's proposed assignment of the rights, duties, and obligations under this Agreement pursuant to Section 15.2 below to Solon, and/or Company's failure to provide a release as set forth in Section 13 above, other than the assignment of Customer's obligations under Section 6 or 7 above, or Customer's representations under Section 11 above. Provided, however, that Company's refusal to consent to Customer's assignment of and/or to release Customer from the Customer obligations under Section 6 or 7 above or the representation and warranty set forth in Section 11

above shall not be grounds for the Customer to terminate the Agreement under this Section 14.2 (iv.).

14.3. Notwithstanding anything contained herein to the contrary, unless the Company grants an extension, if the Customer System does not pass the Conformance Inspection by the Installation Deadline, Company or Customer, may terminate this Agreement upon (30) days prior written notice. In the event of such termination, neither Party shall have any further obligation to the other hereunder and neither Party shall have any liability to the other stemming from such termination.

14.4. Company, in its sole discretion, may immediately terminate this Agreement upon written notice to Customer in the event the Customer's Program reservation relating to the Customer System is cancelled by Company in accordance with the Program, including for a failure to meet any project advancement requirements under the Program. In the event of such termination, neither Party shall have any further obligation to the other hereunder and neither Party shall have any liability to the other stemming from such termination.

14.5. Company, in its sole discretion, may immediately terminate this Agreement upon written notice to Customer in the event the Customer System fails to produce at least the Minimum Contract Quantity during any twelve (12) month period during the Term.

14.6. **TERMINATION FOR CONFLICT OF INTEREST.** This Agreement is subject to cancellation for conflict of interest pursuant to ARS § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.

14.7. Notwithstanding anything contained herein to the contrary, this Agreement shall immediately terminate, without any further action by either Party, when Company has purchased the Contract Quantity of REC's from Customer as set forth in Section 5.2 above.

14.8. This Agreement may also be terminated at any time by mutual written agreement of the Parties.

## **15. MISCELLANEOUS**

15.1. **Modification, Waiver and Severability.** This Agreement may not be modified or supplemented except by written instrument signed by the Parties. No waiver of any default or breach hereof shall be deemed a waiver of any other default or breach thereof. If any part of this Agreement is declared void and/or unenforceable, such part shall be deemed severed from this Agreement which shall otherwise remain in full force and effect.

15.2. **Assignment.** This Agreement and the rights, duties, and obligations hereunder may not be assigned or delegated by the Customer without the prior written consent of Company, which consent shall not be unreasonably withheld.

**15.3. Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Arizona, without regard to the choice of law provisions thereof. Venue for any dispute arising hereunder shall be any court of competent jurisdiction located in Pima County, Arizona.

**15.4. Entire Agreement.** This Agreement is the final integration of the agreement between the Parties with respect to the matters covered by it and supersedes any prior understanding or agreements, oral or written, with respect thereto.

**15.5. Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same Agreement.

**15.6. Titles and Captions.** Titles or captions contained in this Agreement are inserted for convenience and for reference only and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

**15.7. Expenses and Attorney's Fees.** In any actions between the Parties to enforce any of the terms of this Agreement, the prevailing Party shall be entitled to recover expenses, including reasonable attorney's fees.

**15.8. Force Majeure.** Neither Party shall be liable to the other for failure to perform its obligations hereunder to the extent such failure results from causes beyond its reasonable control, including strikes, climatic conditions, acts of God, governmental laws, regulations, orders or requirements, interruptions of power or unavailability of equipment or supplies (each a "Force Majeure Event"). Provided, if any Force Majeure Event claimed by a Party continues for an uninterrupted period of more than one hundred and eighty (180) days, then the other Party may, at any time following the end of such period, terminate this Agreement immediately upon written notice to the affected Party, without further obligation to either Party, except as to payment of any costs and liabilities incurred before the effective date of such termination.

**15.9. Forward Contract.** The Parties agree that this Agreement and the transactions contemplated hereunder shall constitute a "forward contract," and that the Parties are "forward contract merchants," within the meaning of the United States Bankruptcy Code.

**15.10. Customer Transfer of Rights.** Upon Customer's assignment of Customer's rights, duties or obligations pursuant to Section 15.2 above, Customer's successor-in-interest shall expressly assume such assigned Customer rights, duties and obligations hereunder in writing, and the terms and conditions of this Agreement shall not be affected, nor shall Company's rights hereunder be disturbed in any way, including, without limitation, Company's continued right to all RECs assigned pursuant to Section 6 hereunder. Customer shall provide Company with an executed assignment agreement in a form satisfactory to Company upon any such assignment. Any failure to comply with this provision shall be considered a material breach of the Agreement.

15.11. **Compliance with Law.** Customer shall comply with all applicable federal, state and local laws, regulations, ordinances and codes at all times in performing under this Agreement.

15.12. **Survival.** After expiration or termination of this Agreement, those provisions which specifically provide for survival beyond expiration or termination, and all provisions, regarding warranty and limitation of liability shall survive indefinitely or until the expiration of the time period specified elsewhere in this Agreement with respect to the provision in question.

15.13. **No Third Party Beneficiaries.** Other than with respect to the assignment of payments to SOLON PM1, LLC pursuant to Section 5.3 hereof, this Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.

15.14. **Taxes.** Customer shall pay all local, state and federal taxes, levies, duties and assessments of every nature whatsoever which may be imposed or due in connection with the RECs sold to Company hereunder. Customer shall hold Company harmless from any and all future liability on account of any and all such taxes, levies, duties, and assessments.

15.15. **Notices.** All notices under this Agreement shall be in writing and shall be given by personal service (including receipted confirmed facsimile), or by certified or registered mail, return receipt requested, or by recognized overnight courier service, to the Parties at the addresses set forth below. All notices shall be deemed given upon the actual receipt thereof.

**Company:**

**Tucson Electric Power Company**

PO Box 711

Tucson, Arizona 85702

Fax: (520) 918-8350

Attn: Renewable Energy & Energy Efficiency Group

***[signatures on following page]***

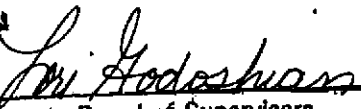
ACCEPTED AND AGREED as of the Effective Date set forth above.

**TUCSON ELECTRIC POWER COMPANY**

By: 

Title: David G. Hutchens  
Vice President

ATTEST

  
Clerk, Board of Supervisors  
Pima County, Arizona

APPROVED AS TO FORM

  
Civil Deputy  
County Attorney

**CUSTOMER**

By: 

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

**TO BE FILLED IN BY COMPANY**

Estimated Annual Energy Reserved: \_\_\_\_\_ kWh

Estimated Annual Payment \$ \_\_\_\_\_

Date Reserved: \_\_\_\_\_

**ATTACHMENT A**  
**Non-Residential 20 kW or Greater Grid-Tied Solar Program System Qualifications**

All non-residential grid-tied 20 kW or greater solar Customer Systems must meet the following system and installation requirements to qualify for Tucson Electric Power Company's ("TEP" or the "Company") Renewable Energy Credit Purchase Program. Capitalized terms not defined herein shall have the meanings ascribed to them in the Non-Residential 20 kW or Greater Solar Program Grid-Tied Performance Based Incentive Renewable Energy Credit Purchase Program Agreement between Company and Customer.

1. All systems shall be installed with an azimuth angle of +/- 100 degrees of due south.
2. Photovoltaic modules must be covered by a manufacturer's warranty of at least 20 years.
3. Inverters must be covered by a manufacturer's warranty of at least five years to receive a PBI.
4. All photovoltaic modules must be certified by a nationally recognized testing laboratory as meeting the requirements of UL Standard 1703.
5. All other electrical components must be UL listed.
6. The inverter must be certified as meeting the requirements of IEEE-1547 - Recommended Practice for Utility Interface of Photovoltaic Systems and it must be UL 1741 certified.
7. The Customer System design and installation must meet all requirements of the latest edition of the National Electrical Code, including Article 690 and all grounding, conductor, raceway, overcurrent protection, disconnect and labeling requirements.
8. The Customer System and installation must meet the requirements of all federal, state and local building codes and have been successfully inspected by the building official having jurisdiction. Accordingly, the installation must be completed in accordance with the requirements of the latest edition of National Electrical Code in effect in the jurisdiction where the installation is being completed.
9. The Customer System must meet Company and Arizona Corporation Commission interconnection requirements for self-generation equipment.
10. The Customer System installation must meet the TEP Service Requirements 2000 Edition, Page 1.20, as follows:

"AN AC DISCONNECT MEANS SHALL BE PROVIDED ON ALL UNGROUNDED AC CONDUCTORS and SHALL CONSIST OF A LOCKABLE GANG OPERATED DISCONNECT CLEARLY INDICATING OPEN OR CLOSED. THE SWITCH SHALL BE VISUALLY INSPECTED TO DETERMINE THAT THE SWITCH IS OPEN. THE SWITCH SHALL BE CLEARLY LABELED STATING "DG SERVICE DISCONNECT."

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11. For non-residential Customer Systems, Company shall provide the meter only, to be installed in a Customer supplied meter socket to be installed in a readily accessible outdoor location by the Customer between the Customer System and the connection to the overcurrent device in the Customer's electric service panel.
12. Energy storage devices are not allowed as part of the Customer System unless the energy storage device is a separate component and Company can locate the meter at the Customer System's output.
13. Installation must have been made after January 1, 1997.
14. The Customer must be connected to the Company's electric grid.
15. All Customer System installations must be completed in a professional, workmanlike and safe manner.



**ATTACHMENT B**  
**Supplemental Non-Residential System Qualifications**  
**(Applicable only for Customer Systems of capacity larger than 20,000 watts AC)**

1. All solar electric generating Non-Residential Customer Systems must meet the following additional system and installation requirements to qualify for Tucson Electric Power Company's ("TEP" or the "Company") Renewable Energy Credit Purchase Program. Capitalized terms not defined herein shall have the meanings ascribed to them in the Non-Residential 20 kW or Greater Solar Program Grid-Tied Performance Based Incentive Renewable Energy Credit Purchase Program Agreement between TEP and Customer.
2. The Non-Residential Customer System shall be operating, substantially complete and have produced an AC output at least 70% of the total array nameplate DC rating at PTC as described below.
3. Operation, Maintenance and Repair. The Customer shall be solely responsible for the operation, maintenance and repair of the Non-Residential Customer System and any and all costs and expenses associated therewith. Company will notify Customer of all Non-Residential Customer System repairs the Company determines are reasonably necessary to support proper continued electrical production of the Non-Residential Customer System. The Customer will notify the Company within five (5) business days of its receipt of any such Company repair notice if the repair requires the installation of a new inverter and/or PV module. The Customer shall complete any such repair that affects the Non-Residential Customer System performance and does not require the purchase of a new major component (inverter, transformer, switchgear, HPU, etc) within five (5) business days of the Company's notice of the need for such repair. For any such repair that does require the purchase and installation of a new major component, the Customer shall employ best efforts to promptly commence and diligently pursue such repair to completion, provided, in no event shall such repair take more than thirty (30) days to complete unless specific circumstances justify a longer period and such delay will not result in not achieving minimum kwh annual performance requirements. At all times while Company is receiving the environmental credits from the Non-Residential Customer System, Customer shall clean all PV modules in the Non-Residential Customer System as necessary to keep them free from foreign material that would visibly obscure the modules, including any dirt and/or oils.
4. Non-Residential Customer System Security. At all times during and after installation of the Non-Residential Customer System, the Customer shall use commercially reasonable efforts to provide adequate security to prevent damage or vandalism to the Non-Residential Customer System.
5. Company shall provide Customer with a revenue grade AC meter to be installed between the Non-Residential Customer System and the grid interconnection. This meter will not be used for billing, but shall be used for any official Non-Residential Customer System production output data. Company will retain ownership of the meter and be responsible for its repair if needed.

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6. The utility interactive solar generation Non-Residential Customer System shall deliver an AC output in AC watts at least equal to 70% of the total array nameplate rating in DC watts as measured at performance test conditions (PTC) of 1000 watts/m<sup>2</sup> irradiance, 68 degrees Fahrenheit ambient temperature and a maximum of a 2.4 mph wind speed. The Customer will verify performance of the system with a 30 day test using a temporary data monitor and acquisition system or make a single point measurement to determine the output of the system.
7. The Customer shall verify and demonstrate to Company the proper calibration and operation, through a temporary data monitor and acquisition system, of the solar insolation sensor, the ambient temperature sensor, the wind speed sensor and the AC power meter within +/- 2% of Company independent NIST calibrated sensor data. If performance test data is not available at PTC, the indicated AC power output of the Non-Residential Customer System will be corrected to PTC by the following formula:

Power(PTC)=

$$((\text{Power}(\text{Meter}) * (1000 / \text{SolarSensor}(\text{W/M}^2))) * (1 + (((\text{AmbientTempSensor}(\text{DegF})) - 68) * 0.0026)))$$

(On the condition that data used in the formula is taken on a cloudless day at a solar insolation of at least 950 watts per square meter and wind speed is less than 2.4 mph.)

8. Company shall have the right to challenge the accurate calibration of the sensors and temporary data monitor and acquisition system with proper documentation demonstrating the reasons for the challenge. The Customer shall resolve the challenged sensor or temporary data monitor and acquisition system calibration to the satisfaction of Company prior to the data being used in the performance test being recorded.
9. Customer shall provide Company with no less than ten (10) days prior notice of any planned Customer tests to the Non-Residential Customer System. Company shall have the right to be present at any and all tests of the Non-Residential Customer System. The Customer shall provide Company notice as soon as the Non-Residential Customer System has been installed and has passed all Customer tests.
10. Customer shall provide Company with all documentation reasonably requested by Company to demonstrate to the Arizona Corporation Commission that any environmental credits transferred under the Agreement were derived from an eligible technology, that the kWh generated are accurately reported and that the environmental credits have not expired or been used by any other entity for any purpose.
11. If certified proof cannot be provided of complete galvanic isolation of any and all DC from the AC output of the inverter(s) used in the Non-Residential Customer System through IEEE-1547 certification of the inverter, the Non-Residential Customer System shall include an isolation transformer installed between the inverter(s) and the grid interconnection. The transformer will be rated at full load continuous operation at 50 degrees Celsius at 125% of nameplate DC array rating and have an efficiency rating at nameplate DC array rating power of at least 98% as tested. The transformer will have at least one tap each of 2.5% and 5% both above and below the nominal voltage tap.

## EXHIBIT C

**ASSIGNMENT ASSUMPTION AND RELEASE AGREEMENT**

This Assignment, Assumption and Release Agreement (this "Agreement") is made and entered into this 30th day of November, 2009, by and among Pima County, a body politic and corporate of the State of Arizona, ("Assignor"), Solon PMI, LLC, an Arizona limited liability company, ("Assignee"), and Tucson Electric Power Company, an Arizona corporation ("TEP"). Any term not otherwise defined herein shall have the definition ascribed to it in the REC Agreement (as defined below).

**WHEREAS**, Assignor and Assignee have entered into that certain Solar Services Agreement ("SSA") effective June 8, 2009, which provides that Assignee shall construct and operate a solar power generation system at the Pima County Roger Road Wastewater Reclamation Facility ("System"); and

**WHEREAS**, pursuant to the terms and conditions of that certain Renewable Energy Credit Purchase Agreement ("REC Agreement") related to the System and made and entered into by and between Assignor and TEP, Assignor has agreed to assign to Assignee and Assignee has agreed to accept from Assignor certain of Assignor's rights, duties and obligations under the REC Agreement, and TEP has agreed to release Assignor from any claims against Assignor arising out of the breach of any such assigned rights, duties or obligations; and

**WHEREAS**, TEP consents to such assignment, assumption and release upon the terms and conditions set forth herein; and

**WHEREAS**, TEP and Assignor require and Assignee agrees to provide to TEP certain additional representations and warranties set forth herein.

**NOW, THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Assignment. Effective as of the date hereof, Assignor hereby assigns, transfers, sets over and grants to Assignee, all of Assignor's rights duties and obligations and liabilities under the REC Agreement, and Assignee hereby assumes all of Assignor's rights, duties, and obligations and liabilities under the REC Agreement, other than those obligations in the REC Agreement set forth in Sections 6, 7, 9 (with respect to events of removal of the System by Customer not permitted under the SSA or SLA or removals of the System as a direct result of Customer defaults under the SSA or SLA) and 11 (unless modified under Section 4 hereof). Notwithstanding the foregoing, nothing herein is intended to alter the terms and conditions of the REC Agreement, SSA and SLA (each as may be amended) or the allocation of obligations and liabilities set forth therein and in the event of a discrepancy between anything herein and the REC Agreement, SSA or SLA (each as may be amended) then the REC Agreement, SSA and then the SLA (in that order) shall take precedence over this Agreement. Assignee hereby waives any claims against Assignor related to payments under the REC Agreement.

2. Consent and Release. TEP hereby consents to the assignments and assumptions described herein, and upon execution of this Agreement, forever releases Assignor from any and all obligations set forth in the REC Agreement assigned hereunder, which specifically excludes those obligations set forth in the REC Agreement in Sections 6, 7, 9 (with respect to events of removal of the System by Customer not permitted under the SSA or SLA or removals of the System as a direct result of Customer defaults under the SSA or SLA) and 11 (unless modified under Section 4 hereof), and forever waives any claim of any nature against Assignor arising out of the breach of the rights, duties, and obligations assigned under this Agreement.

3. Additional Representations and Warranties. Assignee hereby represents and warrants to TEP and Assignor that the following statements are true and correct as of the date of execution of this Agreement and will be true and correct at the time of any transfer by Assignor to TEP of any RECs hereunder:

- (a) Assignee is the true and lawful owner of, and has good title to, all RECs transferred from Assignor to TEP hereunder, free and clear of all liens and encumbrances;
- (b) Assignee has given Assignor, by amendment to the SSA, the express right to assign all RECs produced by the System to TEP, for the sole purpose of facilitating payments to Assignee under the REC Agreement;
- (c) Each REC transferred from Assignor to TEP under the REC Agreement meets the requirements of the REST;
- (d) Neither Assignee, nor, to Assignee's knowledge, any third party, has sold, traded, assigned or otherwise transferred any RECs to be transferred from Assignor to TEP under the REC Agreement to any party other than TEP or Assignor;
- (e) Assignee has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder including, without limitation any rights, duties and obligations under the REC Agreement assigned hereunder; and
- (f) Assignee is in full compliance with all applicable federal, state and local laws, regulations, ordinances and codes governing the production and/or sale of electricity, except to the extent that such non-compliance would not have a material adverse effect on the Assignee, Assignor or TEP.

4. Notices. All notices or other communications or deliveries provided for under this Agreement shall be given as provided in the REC Agreement (or the SSA for purposes of notices to Assignee).

5. Binding Effect: Assignment. This Agreement and the rights, duties and obligations hereunder (and assigned hereunder) may not be assigned or delegated without the prior written consent of TEP, which consent shall not be unreasonably withheld. This

Agreement and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

6. Governing Law. This Agreement shall be interpreted, construed and governed according to the laws of the State of Arizona.

7. Counterparts. This Agreement may be executed in two or more counterparts each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

8. Amendments. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by Assignor, Assignee and TEP.

**[Signatures appear on the following page.]**

**IN WITNESS WHEREOF,** the parties have executed this Assignment Assumption and Release Agreement as of the date first written above.

091409 EXECUTION VERSION

ASSIGNOR:

PIMA COUNTY

By: [Signature]  
Chairman, Board of Supervisors

DEC 16 2008

APPROVED BY FORM

[Signature]  
Civil Deputy  
County Attorney

TITLE: \_\_\_\_\_

Attest:

Date: DEC 16 2008

[Signature]  
Clerk, Board of Supervisors

ASSIGNEE:

SOLON PM1, LLC

By: [Signature]

Name: OLAF KOESTER

Title: CEO & President

TUCSON ELECTRIC POWER COMPANY

By: [Signature]

Name: David G. Hutchens

Title: Vice President